85-1729

No. _____

IN THE

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

FOR THE TERM ENDING OCTOBER, 1984

THE FLYING TIGERS INTERNATIONAL; MORTON F. MEADS AS INTERNATIONAL COMMANDER OF THE FLYING TIGERS INTERNATIONAL; ROBERT ZLOMKE AS SECRETARY FOR THE AMERICAN PACIFIC OF THE FLYING TIGERS INTERNATIONAL AND SMALL STOCKHOLDER AND SECRETARY OF THE FLYING TIGERS OIL CO. INC.; AND ALL THE MEMBERS OF THE 20TH BOMBER COMMAND, 14TH AIR FORCE, 13TH AIR FORCE AND 5TH AIR FORCE WHO ARE MEMBERS OF THE FLYING TIGERS INTERNATIONAL; AND CLASS ACTION FOR ALL MEMBERS OF THOSE ARMED FORCES' ORGANIZATIONS WHO ARE OF LIKE MIND; AND THE FLYING TIGERS OIL COMPANY, INC.,

Petitioners,

v.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, THE HON. JUDGES KASHIWA, SKELTON, NIES, AND MARION BENNETT; THE TRADEMARK TRIAL AND APPEALS BOARD, THE COMMISSIONER OF THE UNITED STATES PATENT AND TRADEMARK OFFICE; THE FLYING TIGER LINE INC., BLAKELY, SOKOLOFF, TAYLOR, ZAFMAN AND ERIC HYMAN,

Respondents.

On Writs of Certiorari, Mandamus, and Prohibition with Declaratory Relief to the United States Court of Appeals for the Federal Circuit

PETITION FOR WRITS OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR DECLARATORY RELIEF

(For addresses of counsels, see inside cover)

23 pp

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QUESTIONS PRESENTED

1. Did the CAFC do the legal, moral and right thing when it denied the Motion to Intervene of the Flying Tigers International and its International Commander Morton F. Meads, and its Secretary for the American Pacific, Robert Zlomke, solely because they had not yet intervened in the PTO/TTAB?

2. Did the CAFC do the legal, moral and right thing when it refused to consider and rule on any single one of the violations of Constitutional Rights, Statute Law, Federal Rules of Civil Procedure by and charges of corruption in the Patents and Trademark Office and Trademark Trial and Appeals Board in Appeal No. 84-602 and Petition for Certiorari/Mandamus, etc.?

3. Did the CAFC fulfill its legal, moral and judicial responsibilities when it failed to do what is cited in question 2 above?

4. Is it correct that the CAFC has no jurisdiction over Appeal No. 84-602 and/or Unnumbered Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief consolidated with said Appeal and all the questions and issues raised therein?

5. Is it legally and morally correct for the CAFC to excuse itself from considering and resolving the Appeal 84-602 and the Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief filed by the Flying Tigers International, et al. on the claim that it has no supervisory powers

over the Patents and Trademark Office when in fact it is the successor of the congressionally created Court of Customs and Patent Appeals specifically charged with absolute judicial control and corrective authority over each and everything that the PTO/Commissioner/TTAB does and fails to do?

6. Is it correct legally and morally for the CAFC to excuse itself from ordering by Mandamus the Commissioner/PTO/TTAB to comply with Statute Law and issue the Certificate of Registration to Flying Tigers Oil (authorized by Flying Tigers International), that is entirely completed including publication, on the grounds that such Mandamus would circumvent a trial, when in fact it is precisely that Statute Law that bars a trial?

7. Is it legal, moral and right for the CAFC to ignore the obvious false designation and false use, after 1977, for the purpose of gaining undeserved credit, honor and attention, of the name and mark 'Flying Tigers' by the Flying Tiger Line Inc. — which is actionable by the CAFC on its fact because it deceives the public and therefore can be enjoined immediately?

8. Is it legal and moral for the CAFC to fail to consider and rule on all the questions and issues in Appeal 84-602 and/or the Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief consolidated therewith despite the fact that the Appellee FTiger Line did not deny any of the material facts upon which the questions and issues are based?

9. Is it legal, moral and right for the CAFC to guide Filipino In-House counsel, *pro hac vice*, of the Flying Tigers Oil and finally declare that he does not reach the standards of the CAFC while the subject of the complaint or appeal or Petition is the Untruthfulness and Unethical acts of American counsel, and the illegal, Unconstitutional Acts of omission and commission of the PTO/TTAB in so great quantity and degree that it constitutes corruption and necessarily carries with it an air or order of emotion in the least, which such conditions should normally invoke in the human being; and necessarily requires many pages to report, and including actual pinpointing of untruthfulness by FTiger Line's counsels and Flying Tiger Line with documents to show this — while American Counsel only casts innuendos without Specifics and no documentation — and yet the latter is never reprimanded by the CAFC?

10. Is it legal, moral and right for the CAFC to push off on to the Supreme Court of the United States all the issues and questions and violation of the *U. S. Constitution and Federal Statute Law* existing in appeal 84-602 on the Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief and the questions presented in detail cited in the Appendix of this Petition and also applicable to this petition, as essential consequences and part of these Ten Basic Issues or questions?

11. Is the PTO/TTAB bound to honor and respect the issuance of prior registrations to the Flying Tigers International and Flying Tigers Oil company by a foreign country, the Republic of Morac-Songhrati-Meads?

12. Can a commercial entity take over the name and mark of a Veterans Organization without its consent, legally and morally?

13. Some of the violations of the Constitutional Rights to Due Process and equal protection *and Violations Of The Trademark Law and the* Trademark Rules of Practice and the Federal Rules of Civil Procedure are enumerated herein; can they be committed by the PTTO-TTAB and the Flying Tiger Line with impunity and without review and correction by either the CAFC or The Supreme Court?

14. The Flying Tigers International is holder of Philippines Trademark Registration No. 32095 *for the Mark 'Flying Tigers International' and Tiger Head logo design*, in use over 20 years before the Flying Tiger Line started to imitate; and the Flying Tiger Line started to imitate; and the Flying Tigers Oil Company, Inc. is holder of Philippines Registration No. 33911 for the Mark 'Flying Tigers with tiger head logo design' having used this Mark for more than 20 years before Flying Tiger Line began to try to usurp and imitate; are Flying Tiger Line's registrations superior to those of Flying Tigers International and Flying Tigers Oil Company, or does first use by Flying Tigers Oil and Flying Tigers International and *false designation* by Flying Tiger Line dictate that Flying Tiger Line's registrations be cancelled?

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NO. ———

IN THE

SUPREME COURT OF THE UNITED STATES

———

FOR THE TERM ENDING OCTOBER, 1984

———

THE FLYING TIGERS INTERNATIONAL, MORTON F. MEADS AS INTERNATIONAL COMMANDER OF THE FLYING TIGERS INTERNATIONAL; ROBERT ZLOMKE, SMALL STOCKHOLDER OF FLYING TIGERS OIL CO. INC.; THE FLYING TIGERS OIL CO. INC., ET AL.,

Petitioners,

v.

THE U. S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT, THE FLYING TIGER LINE INC., ET AL.,

Respondents,

———

ON WRITS OF CERTIORARI, MANDAMUS, PROHIBITION WITH DECLARATORY RELIEF TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL COURT

———

PETITION FOR WRITS OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR DECLARATORY RELIEF

INTRODUCTION

The Petitioners herein respectfully pray that a Writ of Certiorari issue to review the final Decision of the United States Court of Appeals for the Federal Circuit dated October 5, 1984; and that Writs of Mandamus/Prohibition be issued to the CAFC same Court and to the Commissioner/Patents and Trademark Office/Trademark Trial and Appeal Board to Issue the Registration of the service mark of the Flying Tigers Oil Co. Inc. in its Application 86288, approved and published; and to dismiss Opposition 63,986 filed out of time and to cancel registrations 999,837, 969,394 and 1,004,930, inter 'alia.'

OPINIONS BELOW

The opinion of the CAFC is unreported, Appendice C of this Petition, pp. xxiv-xxviii, the opinions in the form of orders and notices of the PTO/TTAB are also unreported. The said orders in our possession are Appendices F, G, and I of this Petition, pp. xxxi-xliv. Notices and orders not in our possession and included by reference are indicated at Appendices D, E, and H of this Petition, pp. xxix-xxx. These orders and CAFC decision dated October 5, 1984 in our possession are also part of the Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief in the CAFC which was joined with Appeal 84-602 and is subject of the final Decision of CAFC.

JURISDICTION

This is an action to stop the registration of a servicemark of the Flying Tigers Oil Company, Inc. by the Flying Tiger Line Inc. in the Patent and Trademark Office and Trademark Trial and Appeal Board; and a Counterclaim (petition for cancellation) for cancellation of registrations of the Flying Tiger Line by the Flying Tiger Oil Co. The Flying Tigers International has not yet intervened in the PTO/TTAB because it did not believe that that agency would do what it has done, but it did intervene in the CAFC, which intervention by it and two of its officers was denied. The Office of Patents and Trademarks has jurisdiction over the application for trademarks-servicemarks and registration of same, and oppositions to registrations and petitions for cancellation of registrations, under 15 U.S. Code Secs. 1051, 1057, 1059, 1062, 1063, 1064, 1125 and 28 U.S. Code Sec. 1338 and 35 U.S. Code Sec. 1. However, Petitioners claim that the PTO/TTAB has no jurisdiction or authority over an Opposition to registration filed out of time, i.e. more than 30-days from the date of publication, without any written request for extension of time filed prior to the expiration of said 30-day period and without any certificate of mailing; and further claim that the PTO/TTAB is required by Statute Law to disregard and not give due course to the Opposition of the Flying Tiger Line.

The Petitioners claim that the acts of commission and omission by the Commissioner/PTO/TTAB,

some of which are represented by orders and notices, violate Statute Law, the United States Constitution on due process and equal protection; the Fed. Rules Civ. Procedure; and the said orders and notices, which are in themselves violations; are dated February 13, 1981, March 6, 1981, September 16, 1981, July 15, 1982, December 22, 1982, June 21, 1983. See Appendices D, E, F, G, H, I of this Petition, pp. xxix-xliv. Notice of Appeal to the CAFC was filed on October 26, 1983 according to Certified List, that court having jurisdiction of the appeal under 28 U. S. Code Secs. 1291, 1292, 1542, 1651, 2106, 2201; 15 U. S. Code Secs. 1116, 1117, 1119, 1121, 1122; and 35 U. S. Code Sec. 142.

Before the final Decision of the Court of Appeals for the Federal Circuit in Appeal No. 84-602 the herein Petitioners filed a Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief with the CAFC, which was not given separate due course, but according to the CAFC was resolved also in its final Decision dated October 5, 1984 and according to our information was joined with 84-602 in the CAFC. The CAFC had jurisdiction of said Petition under 28 U. S. Code Secs. 1291, 1292, 1542, 1651, 2106, 2201; and 42 U. S. Code 1981, 1983, 2182, 2459(c); and 44 U. S. Code Sec. 1510 and the Civil Rights Acts of 1866 and 1964.

The final Decision of the CAFC denying said Appeal and the Petition for Certiorari/Mandamus/Prohibtion/Declaratory Relief is dated October 5, 1984 and we believe was entered on Octo-

ber 29, 1984. Its basic premise is that it does not have jurisdiction. Notice of Appeal to the Supreme Court of the United States was filed with CAFC on October 20, 1984, and that court informed us that appeal to the Supreme Court had to be by Petition for Certiorari, hence this Petition. The jurisdiction of this court rests on 28 U. S. Code Secs. 1253, 1254(1), 1256, 1292, 1651, 2101, 2106, 2201; and 15 U. S. Code Sec. 1122; and 42 U. S. Code Secs. 1981, 1983, 2182, 2459 (c); and 44 U. S. Code Sec. 1510; and the Civil Rights Acts of 1866 and 1964; and Veterans Rights Statutes.

There is no order for rehearing. There is no order to our knowledge granting extension of time to file Petition for Certiorari although Motion was filed by Petitioners in December, 1984 with the Supreme Court. There is no Cross Petition.

STATUTES INVOLVED

Among these are the United States Constitution, Articles I, II, III, and the First, Fifth and Fourteenth Amendments. The Trademark Law 15 U. S. Code Secs. 1057e, 1062a, 1063, 1064, 1111 1119, 1120, 1121, 1122, 1123, 1125a, 1126g; the Trademark Rules of Practice of the Patent and Trademark Office With Forms and Statutes, 2.115, 2.145, 2.189, 2.116, Forms 4.17 verification, et al.; Civil Rights Acts of 1866 and 1964; 18 U. S. Code Secs. 241, 1001; 28 U.S. Code 211, 1253, 1254(1), 1256, 1291, 1292, 1338, 1343, 1542, 1651, 2072, 2101, 2106, 2201; 35 U. S. Code 1; 42 U.S. Code Secs. 1981,

1983; Rules of Civil Procedure for The United States District Courts, Rule 8 (c) (d), Rule 13 (a) (b), Rule 28 (c), Rule 55 (a) (g), Rule 56 (b), Rule 57; Federal Rules of Appellate Procedure, Rule 3(a)(c), Rule 4 (a) (1) (2), Rule 21 (a) (b), Forms 1, 3 are set out in full in Appendices 'J', 'K', 'L', pp. xlv-xcii, infra of this Petition.

STATEMENT

The Flying Tigers Oil Co., Inc. filed an application for trademark/servicemark, Application No. 86,288. It was processed, approved, published and the 30-day period for filing oppositions after publication had passed without anyone, including the Flying Tiger Line Inc. filing any opposition. Thus the FTigers Oil considers that it is mandatory upon the Commissioner of Patents and Trademarks to issue the Registration corresponding thereto. However, instead of doing so, the PTO/TTAB accepted an Opposition 63,986 filed on January 5, 1981 without any request for extension by the Flying Tiger Line Inc., which is out of time considering that the publication was on November 18, 1980. Thus it is barred by statute. The proper procedure for the PTO to follow would have been to refuse to accept or deny said Opposition for being out of time and inform the Flying Tiger Line Inc. that their only recourse is to file a Petition for Cancellation, for which there is no technical time limitation. Since the PTO did not do that but instead gave due course to said Opposition it violated the law and deprived the Flying Tigers

Oil Co., Inc., of which Robert Zlomke is a small stockholder and secretary and with an interest to protect and safeguard and who is thus prejudiced in many ways by that illegal action, of equal protection of the laws and due process guaranteed by the U. S. Constitution. The same applies to the Flying Tigers International who is a common law owner of the mark and name 'Flying Tigers' and Morton F. Meads as International Commander are also similarly prejudiced and deprived. Therefore, this is correctible by Certiorari/Mandamus/Prohibition/Declaratory Relief or Appeal, since the action/Notice/Order giving due course to said out of time Opposition is final insofar as the giving due course thereto is concerned. Thus it is appealable or actionable by certiorari and Extraordinary Writ.

This initial unconstitutional and illegal Act/Order of the PTO arranged by the Flying Tiger Line Inc.'s lawyers started the PTO/TTAB down a long road of violations of the Rules of Federal Civil Procedure, violations of the Constitutional Rights of the Flying Tigers Oil and its stockholders to due process and equal protection of the laws and its constitutionally protected property rights, and consequently each and every one of its stockholders, large and small, and any organization from which it obtained rights to use the name and mark 'Flying Tigers', such as the Flying Tigers International, its officers and members. If the PTO/TTAB would not have committed this initial act in violation of the Trademark Law and the Rules of Practice in the Patents and Trademarks Office, almost all of the other violations and issues and questions

raised before the Court of Appeals for the Federal Circuit, and now before the Supreme Court would not exist. If the Supreme Court issues the Writ of Mandamus/Prohibition requested, or order CAFC or PTO/TTAB to do the same or the equivalent, almost all other issues raised to the CAFC would become moot; and those that would not could be resolved on the merits by the CAFC.

The PTO/TTAB stated that it would not consider any move to question the out of time filing of Opposition. Thus the Flying Tigers Oil Co. was compelled to answer. It filed a Counterclaim of Petition to cancel the registrations of the Flying Tiger Line Inc. and stated affirmative defenses of first use, false designation by the Flying Tiger Line, out of time filing, estoppel, fraud on the part of Flying Tiger Line among many others.

PTO/TTAB denied the applicant's Motion to Dismiss and Opposer's sham Motion for Summary Judgment by an order dated September 16, 1981, Appendice F of this Petition, pp. xxxi-xxxiii, but allowed the introduction of two new issues not contained in the Opposition by stating them in the order and requiring applicant to prove them, thus placing the burden of proof upon FTOil which should be upon FTLine if it had included them in its Opposition, which it had not, and which per force were thus barred from the case both by the Federal Rules of Civ. Procedure and the out of time filing of the Opposition, the deadline date being set by Statute Law. The TTAB also adopted a false statement of FTLine's American counsel,

which it, the PTO/TTAB, knew was false being in possession of the original records of the application, and it refused to correct either the falsification of the FTLine or its own, thus tieing these two together even more firmly in their violations of Statute Law and the constitutional rights of herein Petitioners to due process and equal protection.

Flying Tigers Oil filed a Motion for Reconsideration, a supplemental answer with exhibits and affirmative defenses. The TTAB ruled these out by its order dated July 15, 1982, Appendice G of this Petition, pp. xxxiv-xxxviii. The Flying Tigers Oil filed a Motion for Summary Judgment based upon the affirmative defenses in the original answer and the failure of FTLine to answer specifically many material averments of the FTOil, and failure to answer many other material averments at all. The FTLine did not file any oposition to the Motion for Summary Judgment of the FTOil. Notwithstanding, the TTAB denied the Motion for Summary Judgment of FTigers Oil motu proprio stating that it was not compelled to grant it because the opposing party did not oppose it. This was done by Order dated June 21, 1983, Appendice I of this Petition, pp. xxxix-xliv. This outrageous favoritism is companioned with the removal from the record (as shown by the Certified List, Appendice M of this Petition, pp. xciii, that pleading not being listed there) of the Pleading of FTigers Oil which itemized each and every averment of FTiger's Oil that the FTiger Line and its counsel failed and refused to answer, which answer is mandatory.

The TTAB in its last order subject of appeal did not rule on the Flying Tigers Oil's Motion for Leave to file Supplemental Answer or Amended Answer after it had previously claimed that it had denied the same because there was no Motion for Leave of Court, even while it was in effect allowing the FTLine to amend its Opposition through the sham-gimmick Motion for Summary Judgment.

The Acts of Omission and Commisison of the PTO/TTAB prior to, in between and after the issuance of said orders, and also embodied in those orders, were appealed as violations of the constitutional rights of the FTOil to due process and equal protection, and violations of the Trademark Law, and the Federal Rules of Civil Procedure, constituting prohibited discrimination, which is immedately appealable to the CAFC and/or the Supreme Court.

Some of these Acts of Omission and Commission constituting the aforecited violations are:

(A) Giving due course to an opposition filed out of time in violation of statute (not subject to extension as a court has discretion to extend without a request) which prescribes exactly 30 days from date of publication unless a written request for extension of time is filed prior to expiration of the 30-day period. None was filed.

(B) The PTO acting motu proprio for the benefit of the FTiger Line even though the latter made no written request for extension of time as

required by the Trademark Law gave due course to the opposition of FTLine.

(C) Failing to issue the registration to the FTigers Oil for its mark already processed, approved and published, with the thirty days for filing opposition already expired without any opposition being filed or any written request for extension of time being filed.

(D) Refusing to correct its mistake/wrongdoing/violation even after being informed and moved by Petitioner FTigers Oil.

(E) Refusing to admit a supplemental answer from the FTigers Oil even while allowing the Opposition out of time, the latter not being discretionary on the part of the PTO/TTAB, but the former allowable on motion.

(F) Allowing the FTiger Line to file a sham Motion for Summary Judgment for the purpose of raising additional issues not included in the Opposition, and then in an Order directing that the FTigers Oil must prove those Issues/Matters even though they were never included in the Opposition/Complaint – and thus legally barred from the case, which was already barred by the Trademark Law for being filed out of time.

(G) Violation of equal protection and due process by TTAB's refusal to allow Supplemental Answer with Additional Affirmative Defenses and Exhibits, but allowing FTiger Line to introduce issues by a sham motion that were never included in the Opposition.

(H) Refusing to require FTiger Line to answer

each and every allegation in the affirmative defenses and counterclaim of FTigers Oil, and thus allowing it to plead on a different standard than is applied against the FTigers Oil; and refusing to rule and act in accordance with the law specifying that failure to answer or to answer specifically constitutes an admission (which admissions destroy the Opposition and show that fraud and perjury were employed to obtain registrations).

(I) Failing and refusing to apply those admissions against the FTiger Line respondent herein to reduce litigation.

(J) Failing and refusing to acknowledge that said failure to answer constituting admissions amount to grounds for dismissal of the Opposition on the merits, and amount to admissions that the Opposition is perjurious and the applications and affidavits filed by FTiger Line are false.

(K) Removing or not entering in the record the Pleading of the FTigers Oil itemizing in detail each and every allegation that the FTiger Line failed refused to answer (which Pleading pinpointed unanswered allegations and cornered the PTO/TTAB in its continuing illegally favorable Acts/Orders on behalf of the FTiger Line) and which refusal to enter pleading of FTigers Oil, or the removal thereof from the record, was discovered by the FTigers Oil only from the Certified List finally obtained from the CAFC in Appeal No. 84-602, and which was obviously removed or not entered precisely to make the PTO/TTAB look good on its illegal allowance of FTiger Line to plead a case without answering all the allegations/affirm-

tive defenses of the Flying Tigers Oil, which omission is an act of falsification of the record and fraud for the benefit of FTiger Line.

(L) Untruthfully telling the FTigers Oil that the Official Gazette was months behind in publication and thus an extension is allowable, when in fact upon verification with the Government Printing Office there was no such late publication for months prior to actual publication of November 18, 1980 for the mark of the FTigers Oil except for one day. See Appendices 'O,' 'P,' 'Q' of this Petition, pp. cxi-cxiv.

(M) Making amendments or adjustments in Trademark Law or Rules of Practice, or in the application thereof, when the statute specifically states that no amendment can be made that causes damage to anyone (in other words adjustments can be made providing that there is no objection).

(N) Denying Motion for Summary Judgment of FTigers Oil even though FTiger Line never filed any opposition thereto; nor separately or in conjunction therewith ever answered all the allegations and affirmative defenses of the Flying Tigers Oil (which were not answered because to do so under oath falsely would lead to a case or cases for perjury, and if they told the truth FTiger Line would be admitting that it has no basis for opposition and no basis for their applications to use the name of the Flying Tigers Oil and its 'Tiger Head Logo')

(O) Issuing an Order dated December 22, 1982 and never sending a copy to the FTigers Oil (which was learned only in 1984 when a copy of the Certified List was sent to the FTigers Oil by the CAFC

showing that Order) thus prejudicing the FTigers Oil in the prosecution of its Petition to cancel registrations of the FTiger Line.

(P) Refusing to send FTigers Oil copy of said Order and even after formal request has been made.

(Q) Sending another Order to the address of the FTiger Line instead of the address of the FTigers Oil thus preventing FTigers Oil from knowing what is transpiring and what status the PTO/TTAB has given to the case/controversy.

(R) Giving to FTiger Line four additional chances to present Evidence in Chief since the Order of December 22, 1982 (which Order was never sent to FTigers Oil), and three additional chances after the FTiger Line completed its evidence in Chief without any witnesses, and only one illegible undecipherable document unidentified and unsigned, with two registrations that are subject to cancellation proceeding on grounds of perjury, fraud, whereas the FTigers Oil would have only one chance after everything is fixed up for the FTiger Line – although that should not be necessary because the Opposition Proceedings are illegal in the first place because of having been filed out of time without any written request for extension of time.

(S) Denying various things to the FTigers Oil but quickly and readily granting approximately the same things to FTiger Line, such as furnishing copies and answers to queries.

(T) Failing/refusing to answer repeated requests of FTigers Oil as to whether a deposition had been filed by the FTiger Line.

(U) Continuously and consistently demonstrating discrimination against Oil and in favor of Airline, with all that those connote and signify subliminally.

(V) Failing/refusing to require FTiger Line to answer allegations of false designation in use of mark 'Flying Tigers' (use after filing of application in 1970's) owned by the Flying Tigers International and Flying Tigers Oil and Flying Tigers Party in common law.

(W) Violating the confidentiality of the application of FTigers Oil prior to registration by showing and furnishing copy thereof to FTiger Line or its counsel (which prior to registration is prohibited by the Trademark Law).

(X) Failure to rule and allow Motion for Leave of Court to amend Answer with Affirmative Defenses and Counterclaim of Petition for Cancellation or admit Supplemental Answer with additional affirmative defenses.

(Y) Failure to disqualify Fruge, Rice, Quigg, Simes, Hutt, Chapman, Mossinghoff after charges of favoritism were filed.

(Z) Allowing notarization of affidavit for FTiger Line in proceeding in the PTO when the name of that notary is essentially the same as a member of the law firm of FTiger Line, Lyon and Lyon, which is prohibited by the Federal Rules of Civil Procedure.

(AA) Allowing defective oath, contrary to the requirements of the Trademark Rules of Practice, for FTiger Line in proceedings before PTO/TTAB.

(BB) Failing to publish Amendments of Rules Rules or Proposed Amendment of Rules in the Official Gazette and Federal Register, beneficial to the FTiger Line.

(CC) Giving of legal advice openly in Orders to FTiger Line and its counsel and telling them how to prevail over the FTigers Oil.

(DD) Allowing private contact with key persons in the PTO/TTAB in order to arrange favorable treatment for the FTiger Line.

(EE) Failing to inform FTigers Oil of its Decision/Action on FTigers Oil's Motion For Leave of Court to amend its Answer with Counterclaim of Cancellation of Registrations of FTiger Line.

(FF) Failing to inform FTigers Oil of rulings on the filing of various papers by the FTigers Oil.

(GG) Failing to report to the FBI the keeping of papers by the FTiger Line that belong to the FTigers Oil and which were sent to the address of the FTiger Line.

(HH) Refusal to resolve FTiger Oil's Motion for Reconsideration of Order dated July 15, 1982 denying Motion to Dismiss.

(II) Answering inquiries and requests of FTiger Line always and quickly and formally but not answering those of FTigers Oil.

(JJ) Failure to resolve Motion for Reconsideration of FTigers Oil of Order dated July 15, 1982 on FTiger Line's simulated sham Motion for Summary Judgment on the two matters introduced thereby but not in issue because of their complete absence from the Opposition filed out of time.

(KK) Transforming and considering FTigers Oil's Motion for Summary Judgment as a Motion for Judgment on the Pleadings when in fact said Motion did not ask for resolution of all the issues in the case, which in itself is before PTO/TTAB illegally having been filed out of time.

(LL)) Stating that the objection of FTigers Oil to some illegible and undecipherable document without certification was made too late, but which is discretionary under the rules, but allowed FTiger Line to file Opposition/Complaint very much out of time, without any written request for extension of time or a certificate of mailing, which is not discretionary and is fixed by Statute.

(MM) Issued an Order in Letter form that no order should be issued prejudicial to the FTiger Line during an investigation for exclusion of FTiger Line's counsel for misrepresentation and fraud, but without equal treatment that no order can be issued against the FTigers Oil during the same period.

(NN) Whitewashed charge of fraud without seeking particulars from FTigers Oil and its counsel, and without asking FTigers Oil for any evidence that it has to prove the charge.

(OO) Placing in Order the misrepresentation of the FTiger Line and its counsel, which falsehood is evident from the very document involved, which is in the possesion of the PTO/TTAB, thus showing outright dishonesty, but total subordination to the wishes of the FTiger Line and its counsel.

(PP) Failing and refusing to correct said false statement in said Order after it was called to

the attention of PTO/TTAB — thus constituting willful falsification of record against FTigers Oil and in favor of FTiger Line and its counsels.

(QQ) Pretended that the telephone company gave it the address of the FTigers Oil in Phoenix, Arizona, when in fact it was the address of the FTiger Line, which type 'Mistake' is inconceivable, unless part of a plan in the PTO/TTAB/FTiger Line.

(RR) Failed/Refused to send a complete copy of the Certified List to the FTigers Oil after Appeal; and after repeated complaints sent only Page 3 thereof consisting of only three items (which reluctance is understandable since it reveals Orders not sent to FTigers Oil and Pleadings of FTigers Oil never resolved, and the material Pleading itemizing the admissions by failure to answer and deny of the FTiger Line which was either removed or not entered in the record of the subject case.

(SS) Followed a course to effectively eliminate discovery for the benefit of the FTiger Line, who has much to hide, and which act blends with the even worse failure/refusal to rule against FTiger Line for failing to deny each and every averment and affirmative defense specifically, and many not at all. If PTO/TTAB would not require a full/complete/specific answer from FTiger Line required by the rules naturally it would not force discovery upon FTiger Line which is almost completely discretionary.

(TT) Continually applying the rules against the FTigers Oil even on minor considerations but

always setting aside the rules for the benefit of the FTiger Line.

(UU) Failing and refusing to apply the Rules on Defaults and Admissions against the FTiger Line.

(VV) Failing to rule that when the FTiger Line does not oppose the Motion for Summary Judgment of the FTigers Oil that is a type of default not subject to arbitrary disregard by the PTO/TTAB.

(WW) Failing to rule that a default by FTiger Line on a Motion for Summary Judgment filed by FTigers Oil in regard to 'Failure of FTiger Line to deny Averment and Affirmative Defenses of FTigers Oil constitutes admissions and a triple default because the FTiger Line had already previously failed to deny the same material averments when specified in the Affirmative Defenses and Counterclaim and Motion to Dismiss of the FTigers Oil.

(XX) Committing the wrongdoing cited in question Presented 27 (OO) in the Brief of FTigers Oil in Appeal 84-602 before CAFC.

(YY) Committing the wrongdoing cited in questions Presented, and acts and failures to act of favoritism, No. 27 (PP to III inclusive) in the Brief of FTigers Oil in Appeal No. 84-602 before the CAFC.

(ZZ) Took over one year to send copies of registrations of FTLine 1,004,930, 969,394 and 999,837 to FTigers Oil, and did so only after Complaint was filed with Inspector General of the Department of Commerce.

(AAA) Never sent pages 1 and 2 of Certified List until apparently the Clerk of Court of CAFC intervened, and never sent even page 3 until a previous reprimand from the CAFC apparently.

(BBB) Typically, in Order dated January 27, 1984 PTO/TTAB directs all its criticism against FTigers Oil despite fact that: FTiger Line filed more papers during that period than FTigers Oil.

The Flying Tigers Oil appealed in October, 1983 after the TTAB[1] had given FTLine three chances to present Evidence in Chief; and after the FTLine had consumed its trial period during which it had completed its evidence with the adoption of its three registrations and the filing of an illegible, unsigned, with manuscript entries, self-created document of unfathomable content or purpose except by a hopelessly corrupt viewer. The FTLine's Counsel having made the false statement that the case was onlyi n the discovery stage when in fact it had only in the discovery stage when in fact it had completed its Evidence in Chief, the FTOil's Counsel had to prepare an Appendix to Reply Brief containing all the documents on FTiger Line's evidence to show that false statement. See Appendix to Reply Brief in 84-602 in CAFC, also marked as Appendice MM in this Petition.

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[1] — PTO refers to PATENTS AND TRADEMARKS OFFICE; TTAB refers to TRADEMARK TRIAL AND APPEAL BOARD: FTLINE refers to THE FLYING TIGER LINE INC.; FTIGERS OIL OR FTOIL refers to THE FLYING TIGERS OIL CO. INC.; CAFC REFERS TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT; APPE. refers to the APPENDIX; RULES OF PRACTICE refers to the RULES OF PRACTICE OF THE PATENT AND TRADEMARK OFFICE.

The CAFC claims that it has no jurisdiction over the Appeal 84-602 and in regard to the Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief filed by the Flying Tigers Oil Co., the Flying Tigers International and its International Commander, Morton F. Meads, the CAFC brushed it off by joining it with the appeal, more or less admitting that it would have jurisdiction, but stating that it is very rare that it issues an extraordnary writ — which is an evasion of the issue of whether the statute is being violated and whether it is mandatory and ministerial on the part of the PTO/TTAB Commissioner, at the stage cited above, to issue the registration applied for and direct the out-of-time-opposer to the Trademark Law for his available recourse, which as stated above is for Petition for Cancellation of Registration — not Opposition to Registration, the FTigers Oil having met all the statutory requirements of the Trademark Law. The CAFC also states that the extraordinary writ canot be granted in order to circumvent a trial. This is diametrically opposite to the legal truth. It is the illegal trial of Opposition barred by Statute that is being used to circumvent the specific dictates of the Statute — which are neither amendable, suspendable, adjustable by the Commisioner/ PTO/TTAB to allow the giving of due course to an out of time Opposition without any written request for extension and which must be filed prior to expiration of 30 day period from publication. It is of no consequence what the 'Trial of Opposition' brings forth. It is illegal because of the provisions of the statute, (Trademark Law and Rules of Practice). If the PTO/TTAB wants to change

the law it cannot do it administratively, nor through the courts. The only trial that it can hold on the matter is a Trial for Cancellation of the Registration — if a Petition for Cancellation is filed by the FTiger Line. Any Writ of Mandamus/Prohibition that may be issued by the Supreme Court can carry the proviso that it is without prejudice to the filing of a petition for cancellation of the legally required registration of the mark of the Flying Tigers Oil Co. Inc. if their are justifiable bases therefor.

All the violations of the Constitutional Rights of the FTigers Oil to due process and equal protection could be referred back to the CAFC for ruling on the merits, inasmuch as the law and constitution do not allow for the CAFC to evade its judicial responsibilities in such a cavalier manner as is shown in the Final Decision in 84-602 which is Appendice C of this Petition pp. xxiv-xxviii, and then try to block an Appeal after remanding and also a rehearing by dismissing appearance of PRO HAC VICE counsel, while taking no action against FTiger Line's counsel on charges of pleading falsely that were not denied and which were proven false by Appendices submitted by FTigers Oil and never objected to.

In order to be fully informed the CAFC should have admitted the intervention of the Flying Tigers International, Robert Zlomke, small stockholder and secretary of the Flying Tigers Oil Co. and Secretary for the American Pacific of the Flying Tigers International and Morton F. Meads, International Commander of that organization of veterans of the

20th Bomber Command, 14th 13th, and 5th Air Forces of the United States. Intervention is usually viewed judicially with liberality, the principle being that in the search for truth and judicial wisdom all voices and involved parties should be heard.

This Appeal/Petition also involves all the questions presented to the CAFC and cited in the Amended Petition of Appeal and the Brief of the appellant FTigers Oil. The Petitioners herein request that all of the Briefs, Appendices and Exhibits submitted in the CAFC be elevated to the Supreme Court. The International Commander of the Flying Tigers International, Morton F. Meads, and its Secretary for the American Pacific, Robert Zlomke, as veterans of the Armed Forces of the United States, and the Flying Tigers International being a veterans organization, request that their participation as peitioners be accorded any rights or privileges applicable to veterans in judicial proceedings, and that the CAFC and PTO/TTAB be instructed to allow their intervention at all times in the matters subject of this Petition.

The basis for Federal Jurisdiction in the Court of First Instance, i.e. the Trademark Trial and Appeal Board, which is equivalent to a Federal District Court, is stated in this Petition under jurisdiction. There is no dispute between the parties, the PTO/TTAB, the CAFC that there only federal jurisdiction is involved entirely and from the outset The provisions of the applicable law are cited in the Appendix of this Petition, i.e., Appendice 'L', pp. lxvii-xcii. The CAFC admits and states in its final Decision, Appendice C of this Pe-

tition pp. xxiv-xxviii that it has jurisdiction over the PTO/TTAB but claims that jurisdiction only applies to final decisions.

REASONS FOR GRANTING THE WRITS

The Supreme Court should grant the Writ of Certiorari sought, as well as other writs, because important and special reasons exist, to wit:

(A) The CAFC has so far sanctioned the departure by the PTO/TTAB from the usual or legal and constitutional course of judicial proceedings required and controlled by the Constitution, First, Fifth and Fourteenth Amendments, the Trademark Law, 15 U. S. Code, and the Federal Rules of Civil Procedure as to call for the exercise of this court's power of supervision; and,

(B) The CAFC has decided federal questions in a way in conflict with applicable decisions of the Supreme Court or other Federal Courts of Appeal, or has refused to decide such questions in any way whatsoever; and,

(C) The CAFC has refused to render judicial services as required by the Constitution, has passed the judicial buck either to the Supreme Court or to the PTO/TTAB, and thus has also violated the principle of equal access to the courts laws (on the basis that access means that the federal courts will render judicial services on the merits once entry is permitted) and the Meads Judicial Bill of Rights.

(D) The CAFC has degraded Filipino counsel for 'unconciseness' and 'emotionalism' while to-

lerating proven, and undenied, allegations of untruthfulness or misrepresentation by American counsel which should be reviewed by this court to determine whether favoritism and discrimination is involved and the CAFC action justified and proper considering that the Philippines Supreme Court allows American counsel admission to the Philippines Bar and Regular Practice before all courts without examination on the presumption of the existence of reciprocity; and,

(E) To resolve important, serious and broad federal questions in a clear and definitive manner that are at present either cloudy, contradictory or not yet ruled upon ultimately, or which deserve a new ruling because of staleness and related considerations, but which should be fully ruled upon by the Supreme Court and jurisprudence revitalized at the earliest possible time; and,

(F) To settle once and for all whether the federal courts are required to rule on the merits of all cases controversies brought before it involving *violations of constitutional rights and/or statute law;* and

(G) To resolve absolutely whether the All Writs Act is a dead letter or whether the federal courts are going to exercise their powers and duties thereunder; and,

(H) To render periodic supervision over the Federal Office of Patents and Trademark and clean it up, straighten it out, and instruct it properly and fully on the rules of trial procedure, due process and equal protection as related to matter under the jurisdiction of the PTO/TTAB, which judicial

supervision of said federal agency is long overdue and will last for at least another generation if all the questions in the above-entitled case are resolved by the Supreme Court; and,

(I) To resolve clearly and fully whether the judicial power to review interlocutory orders provided by 28 U.S. Code Sec. 1292 (a) (e) App. L of this Petition, pp. lxii-xcii (on the basis that the TTAB is equivalent to a district court and that Mandamus/Prohibition has injunctive character, and that the instruction of the PTO/TTAB that it would not entertain any question or objection about its giving due course to the 'Opposition' out-of-time is injunctive in character) had been rescinded by the Supreme Court or other federal courts, such as CAFC, by its own jurisprudence excusing itself from resolving interlocutory orders on their merits on the grounds that interlocutory orders do not dispose of a case finally or have a dispositive part, but which reasons contradict the said action of Congress and the President giving to federal-courts the power to hear, consider and resolve matters in interlocutory orders, or acts and failures to act represented by interlocutory orders, on their merits.

These reasons are demonstrated in detail by the questions presented both in this Petition to the Supreme Court and in the CAFC, the latter holding both Appeal 84-602 and a Petition for Certiorari / Mandamus / Prohibition/Declaratory Relief that are joined. See also Appendices 'A' and 'B' of this Petition pp. i-xxiii and xxx the resolution on the merits of which, in a clear, categorical and

full manner, will accomplish the judicial objectives suggested in, for and by the aforecited reasons for granting the writs prayed for.

ARGUMENT

Because of the page limitation of the Rules of the Supreme Court there is no space for a *bona fide* argument. Right to present argument is a Substantive Right under 28 U. S. Code Sec. 2072, which a party should not be deprived of.

Nevertheless, a brief memorandum of argument on several of the most important questions presented can be found in Appendice 'X' pp. cxxiii-clxvi of this Petition. In addition the Argument in the Typewritten Petition of Robert Zlomke is hereby adopted and made an integral part of this Petition by reference.

MANDATORY STATEMENTS

The Petitioner herein hereby certifies that to his knowledge the United States Court of Appeals for the Federal Circuit or any other Federal Court has not certified, pursuant to 28 U.S.C. Sec. 2403 (a), to the Attorney General that any act of Congress has been drawn in question at the time this Petition was prepared and filed.

SWORN STATEMENT OF MAILING AND AFFIDAVIT OF SERVICE

These are located at the end of this Petition, after the Appendix, the last two pages.

CONCLUSION

Robert Zlomke is a Petitioner herein because he has an interest and right to protect as a small stockholder of the Flying Tigers Oil Co. Inc., and an officer thereof; and as a member and officer of the Flying Tigers International and is proceeding *in forma pauperis* pursuant to the Motion filed in this court for leave so to proceed together with the required affidavit.

The CAFC erred in not giving due course to the Petition for Certiorari-Mandamus/Prohibition/ Declaratory Relief (although it joined it with Appeal No. 84-602 in its Final Decision; and the CAFC erred in not issuing the extraordinary writs of mandamus and prohibition to the Commissioner of Patents and Trademarks (PTO/TTAB) to issue the registration required by Statute of the mark 'Flying Tigers Oil' or 'Flying Tigers Oil Co.' to the Flying Tigers Oil Company, Inc. and dismiss the Opposition thereto; and it erred in refusing to order the termination of the violations of the Constitutional Rights of the Flying Tigers Oil, and consequently its stockholders and officers, and the members and officers of the Flying Tigers International, to due process and equal protection; and it erred in not admitting the Flying Tigers International and Robert Zlomke, Secretary for the American Pacific, and Morton F. Meads, International Commander, as Intervenors in Appeal 84-602 (although they were petitioners in the Petition for Certiorari/Mandamus/ Prohibtion/Declaratory Relief in the CAFC); and it erred in not correcting and ordering PTO/TTAB to cease and desist violating the Federal Rules of Civil Procedure; and it erred in not identifying

these many violations as constituting 'corruption' and therefore immediately actionable by any higher federal court; and it erred in not ordering summarily the cancellation of the registrations 999,837 and 969,394 and 1,004,930 on grounds of perjury and fraud for the first two, as well as for false designation for the first one cited, which is shown in the very papers submitted to the PTO by the Flying Tiger Line Inc. itself; and cancellation of 1,004,930 for being descriptive in character on its face; and it erred in claiming that it has no supervisory powers over the PTO/TTAB/Commissioner when in fact what is sought is judicial review of their actuations, Constitution violations represented by Acts and Orders and Notices; and it erred in forcing the FTOil Co. to suffer and endure the violations of its Constitutional Rights and those of its stockholders set forth in the Appeal 84-602; and it erred in siding with counsel of FTLine against the counsel of FTigers Oil considering that it is the counsel of the latter that is protecting and presenting the complaints and bad news about the PTO/TTAB and therefore compelled to explain, support, analyze, detail and show the wrongdoing and violations of the PTO/TTAB which task inevitably requires time/space/written accounts/emotional strain or the appearance of emotional strain; and it erred in forcing the Petitioners, including the undersigned, in the Petition before the CAFC to go to the Supreme Court to request the latter to do the work of the CAFC; and it erred in addressing the questions presented from the sole point of 'Appeals of Orders' of PTO/TTAB rather than from the violations of the Consitutional Rights through discrimination which demand the attention of the CAFC

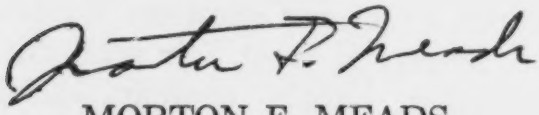
and immediate correction and redress; and the Commissioner/PTO/TTAB erred in committing all the acts of omission and commission cited in this Petition and the Appendices 'A' and 'B' of this Petition, including the Orders of TTAB, Appendices 'F', 'G', and 'I' of this Petition, which are representative of the illegal and unconstitutional acts complained of and an extension thereof, and therefore all said errors should be corrected by the Supreme Court. The Petitioner Robert Zlomke, and those privy to him and this Petition have presented important, novel, unprecedented considerations, issues and questions involving fraud, corruption, burden of proof, fair trial, due process, equal protection, judicial anarchy, racial or nationality discrimination in counsel, indirect and/or subliminal discrimination involving parties and their types of business and the sanctity and paramountcy of the Constitution over judicial technicalities and prerogatives.

Wherefore the Supreme Court should grant the Writ of Certiorari to the CAFC and the PTO/TTAB to review their Orders and Decision and acts of commission and omission, and thereafter grant the Declaratory Relief requested together with the applicable Extraordinary Writs of Mandamus and Prohibition, and disbar Blakely, Sokoloff, Zafman and Hyman for making untruthful statements to a federal court.

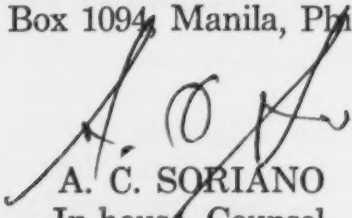
Dated: 3 January 1985.

Respectfully submitted,

ROBERT ZLOMKE
Petitioner (In Forma Pauperis) PRO SE
Small Stockholder and Officer of the Flying Tigers Oil Co., Inc.
Member and Officer of the Flying Tigers International
P. O. Box 1094, Manila, Philippines



MORTON F. MEADS
Petitioner (PRO SE) (For and In His Own Behalf)
Member and Officer of the Flying Tigers International
P. O. Box 1094, Manila, Philippines



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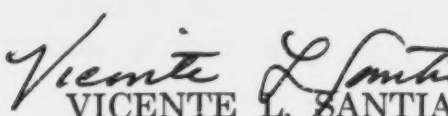

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And Attorney For The Flying Tigers International

Appendice 'A'

QUESTIONS PRESENTED IN DETAIL IN SUPREME COURT

1. Does the Supreme Court have jurisdiction over either an Appeal from or Petition for Writ of Certiorari to the COURT OF APPEALS FOR THE FEDERAL CIRCUIT relative to the latter's Final Decision dated October 5, 1984?

2. Do the Petitioners who are Veterans or a Veterans Organization have the right to avail of the privileges provided by the law and the Rules of the Supreme Court for veterans to petition this court and maintain a position in this case and controversy?

3. Is corruption in a Federal Agency or tribunal (represented by repeated violations of the constitutional rights of Flying Tigers Oil Company and the Flying Tigers International and its International Commander Morton F. Meads, and the members of the Flying Tigers International inasmuch as they have given to the Flying Tigers Oil Company the right to use the name and mark 'FLYING TIGERS') and violations of the Rules of Federal Civil Procedure) immediately reviewable by appeal or certiorari by either the CAFC or the Supreme Court, or the Supreme Court on Writ of Certiorari to the CAFC for the latter's failure/refusal to use its judicial powers to put a stop to that corruption?

4. Does the law require Flying Tigers Oil Co. (and consequently Flying Tigers International and its officers and members) a party to suffer the usurpation of its name and mark, owned in common law, by another party who is using the name and mark 'FLYING TIGERS' as a false designation, inasmuch as that party, the Flying Tiger Line Inc. is not the 'Flying Tigers', never were the "Flying Tigers' and never will be the 'Flying

Tigers' through various proceedings when the principle of 'false designation' is subject to immediate termination through Preliminary Injunction, Mandamus/Prohibition/Declaratory Relief?

5. Is the CAFC and/or the Supreme Court obligated to terminate the illegal use of the name and mark 'FLYING TIGERS' and 'tiger head logo' by the Flying Tiger Line Inc. when the documents filed by it in the Patents and Trademark Office in various applications and proceedings show that it did not use that name and mark and logo either before the Flying Tigers Oil Company or the Flying Tigers International, or before it filed applications for registration of that mark and logo in the PTO; or is that party, Flying Tiger Line Inc. bound by its own contradictory statements and admissions against self and interest in the very records supplied by the FT Line to the PTO; and the PTO/TTAB and CAFC bound to take summary action to terminate/cancel registration of FT Line after those admissions, contradictions and perjury are brought to the attention of the PTO/TTAB and the CAFC?

6. Is the CAFC and the Supreme Court holding jurisdiction over the procedure of determining of what a 'fact' is; and how a particular consideration is determined to be a 'fact' or 'nonfact'; or the failure/refusal of the PTO/TTAB to require the FTLine Inc. to answer specifically the allegations of fact of the FTiger Oil Co.; and the illegal and unconstitutional procedure of the PTO/TTAB of applying two different standards of factual determination to the parties for the illegal benefit of the FTLine and the illegal prejudice of the FTigers Oil, and other entities effected?

7. Does the CAFC have the right to refuse to rule on the merits of allegations of violations of constitutional rights in federal agencies brought to its attention on appeal or by certiorari?

8. Does the Constitution of the United States and the Judicial Powers under Article III make it mandatory upon the CAFC and the Supreme Court to rule on the merits of all charges of violations of constitutional rights to due process and equal protection brought before it on appeal or Certiorari/Mandamus/Prohibition and Declaratory Relief?

9. Is there such a thing as judicial buckpassing; and if there is, is it time for the Supreme Court to declare by various means a Judicial Bill of Rights including a requirement that all courts of appeals are required to rule on the merits of all charges of violations of constitutional rights to due process and equal protection and of violations of the Rules of Federal Civil and Criminal Procedure; and including a condition that no matter may be brought to it until it has been ruled upon on its merits by a Federal Court of Appeals or State Supreme Court, and that those courts are legally and constitutionally required to rule on the merits of all constitutional, legal questions brought before it by any means?

10. The CAFC has implied in its final decision, (App. C, pp. xxiv-xxvi that the subject matter of Appeal No. 84-602 may still be brought to it sometime in the future: Is there any reason to expect that the charges of violations of the constitutional rights to due process and equal protection by the PTO/TTAB and FTLinc will be of any more concern to the CAFC the second time than it has been the first time in 84-602 when the CAFC refused to entertain them, consider them or rule upon them in any way whatsoever?

11. Must the FTigers Oil and others connected with it suffer the violation of its constitutional rights and incur the injuries, many irreparable, when the CAFC has the jurisdiction, the judicial powers, either appellate or original, to put a stop to those violations?

12. Has Flying Tigers Oil, in alleging that the TRADEMARK Law, as applied by the Patents and Trademark Office/Trademark Trial and Appeal Board, violated the Fourteenth Amendment and Trademark Law in requesting appellate, mandamus/prohibition, and declaratory relief to compel, the PTO/TTAB to apply, enforce and execute the provisions of the Trademark Law; and in seeking relief designed to redress the deprivation of its right not to be denied due process and equal protection of the laws, without infringing upon any right of private entities to take recourse to filing Complaint for Cancellation of Trademark (a) stated a cause of action within the appellate jurisdiction of the CAFC and original jurisdiction for issuance of extraordinary writs 28 U.S.C. § 1651, All Writs ACT, and under 15 U.S.C. § 1071, the 1st and 14th Amendments; and 28 U.S.C. § 1343, 2281 and, hence, within the jurisdiction of the CAFC and the Supreme Court on direct appeal under 28 U.S.C. § 1253 and 1253(b) presented and maintained a case or controversy subject to determination by the exercise of judicial power under Article III of the United States Constitution?

13. Does the PTO/TTAB/CAFC scheme of litigation control as established by the acts/orders of the PTO/TTAB and final decision of the CAFC, (App. C, pp. xxiv-xxvi) insofar as it involves the refusal to issue a registration under application 86,288 to the FTigers Oil, whose application was completed, approved and published and unopposed for thirty days and more without any written request for extension of time to file an Opposition thereto, and which Registration can still be made subject to filing of Petition for Cancellation of registration at any time by any party claiming to be damaged thereby (which registration places the 'burden of proof' upon any Petitioner for Cancellation, and which 'burden of proof' is a property right protected by the Constitution of the United States and a part of due

process and equal protection) constitute Corruption, and/or Violations of the Constitutional Rights of the FTigers Oil, and other affected thereby, particularly under the Fourteenth Amendment?

14. Did the PTO/TTAB/CAFC, in giving due course to Opposition No. 63,986 filed out of time and barred by the Trademark Law discriminate against the FTigers Oil in violation of the Law and the U.S. Constitution and fashion a procedure and inevitably a conclusion contrary to facts already known and a matter of record and legal principles already well established under the process and equal protection of the laws provisions of the United States Constitution?

15. Has an action for redress of the deprivation of the constitutional right to equal protection of the laws, brought pursuant to 42 U.S.C. § 1983, been precluded or limited in anyway by enactment of the Civil Rights Act of 1964 which provides for extraordinary writ relief against discrimination by government action?

16. Is the CAFC legally obligated to order the termination of violations of the Constitutional Rights of one or more of the petitioners herein after they are brought to the attention of the CAFC either by appeal or Petition for Certiorari/Mandamus, Prohibition/Declaratory Relief?

17. Is the CAFC obligated to order the termination of violations of the Rules of Federal Civil Procedure by the PTO/TTAB when judicially presented to it ?

18. Is the CAFC obligated to rule on the merits of all the violations of Constitutional rights to due process and equal protection presented to it by the FTOil Co. and which are embodied in orders/Acts and failures to act of the PTO/TTAB?

19. Does the CAFC have jurisdiction over the Appeal in 84-602 and the Petition for Certiorari/Mandamus, Prohibition/Declaratory Relief, not docketed but cited in the final decision of CAFC dated Oct. 5, 1984 in 84-602, and the obligation to rule on the merits of all the questions and issues presented therein?

20. Is the PTO/TTAB obligated by Statute, Trademark Law, to issue Registration to FTOil for its mark Flying Tigers Oil or Flying Tigers Oil Co. under completed and published application 86.288 when no opposition was filed within 30 day statutory period and no written request for extension of time was filed by the Flying Tiger Line or any other entity?

21 Is the CAFC or the Supreme Court of the United States obligated by law and the Constitution to issue a writ of Mandamus to PTO/TTAB to issue registration based upon the Statutory specifications in the Trademark Law?

22. Is 'Burden of Proof' under the Trademark Law and the FRCivPro. a Property Right protected by the Constitution for the party not having that burden?

23. Is the noncompletion of the trial in the TTAB grounds for the CAFC to refuse to use its judicial powers to terminate violations of the Constitution or rights of Flying Tigers Oil, and others effected by that refusal, to due process and equal protection before and during that trial?

24. Is the completion of the evidence of the FTLine in the TTAB a sufficiently advanced stage for the FTigers Oil Co. to bring all violations of the Rules of Federal Civil Procedure and of the Constitutional Rights to due process and equal protection of the FTigers Oil, after the latter has already registered such complaints with the PTO/TTAB, to the judicial attention of the CAFC for redress and correction?

25. Does the FTO/TTAB have the legal right to eliminate a pleading of the FTigers Oil itemizing the allegations of fact that the FTLine has failed and refused to answer in anyway from the record of Case No. 63,986 and from the Certified List sent to the CAFC thus falsifying the record and giving illegal benefit to the FTLine and illegal prejudice to the FTOil?

26. Does No. 24 above create obligations for the CAFC to resolve the issues and questions brought before it in Appeal No. 84-602 and Petition for Certiorari/Mandamus, Prohibition/Declaratory Relief and terminate the violations cited therein?

27. Can the CAFC legally ignore over 30 primary and 100 secondary issues/questions brought before it on appeal 84-602 with the claim that it does not have supervisory powers over the PTO/TTAB, when it is manifest that what is being asked for is a judicial review and action?

28. Does the CAFC have the power to restrict the number of pages of the Brief of FTigers Oil so that either the "Questions Presented" or the "Argument" must be eliminated and/or does that restriction violate 28 U.S.C. § 2072 guaranteeing that no substantial right of any party can be prejudiced by the internal operating rules of a court?

29. Can the Judges in the CAFC legally sign a Decision while an undisclosed person or judge therein writes the decision?

30. Can the CAFC legally prejudice or disparage the counsel of a party for being 'wordy' or 'unconcise' and 'emotional' when that party is the one afflicted by multivarious wrongdoings of the opposing party and its counsels (which perforce it must state and argue) and when the First Party and its counsel have itemized particular false statements of opposing american counsel?

31. Can the CAFC legally evade its legal obligations to apply its constitutional judicial powers to order termination of violations of the constitutional rights to due process and equal protection and violations of the Rules of Fed. Civ. Procedure on the claim that ORDERS appealed to it and containing some of those violations, are interlocutory or that such orders do not dispose of the case completely and finally?

32. Can the CAFC legally make rules and legally enforce those rules which were never set for hearing and the reception of opposition thereto?

33. Is the CAFC legally obligated to order the PTO/TTAB to issue Summary Judgment against FTLine when the latter did not OPPOSE the Motion for Summary Judgment of the FTigers Oil in the PTO/TTAB, and did not answer all the affirmative defenses and allegations of fact of the FTigers Oil, which failure constitutes admissions?

34. Can the CAFC legally refuse a Writ of Mandamus/Prohibition for issuance of Registration of a Trademark on a claim that the trial is not completed when the basis for the WRIT is the failure/refusal of PTO/TTAB to perform a ministerial function mandated by the Statute (Trademark Law), which function does not allow for delay or a proceeding to circumvent the mandatory requirement of the Stature?

35. Will the CAFC give any more consideration and appreciation to the claim of mandatory statutory obligation of the PTO/TTAB to issue registration to FTigers Oil on later appeal after completion of trial than it has no current appeal No. 84-602 when nothing about such obligation of PTO/TTAB and legal right of the FTigers Oil will change between now and any later date, the law and the facts in regard thereto already being in existence and incapable of being changed?

36. Is not the CAFC legally and morally obligated to issue the Writ of Mandamus/Prohibition immediately in the interest of judicial economy and enforcement of the Statute specifications and Constitutional requirements to equal protection of the law?

37. Is not the CAFC denial of the Writ Now, when plea is based on Statute, an actual permanent denial and the inference by the CAFC in its final decision that it can consider it later on appeal nothing but a delusion and deception?

38. Is the claim of the CAFC in its final decision dated October 5, 1984 stating that a Petition for Mandamus/Prohibition based upon Statute is a circumvention of appeal after trial a correct legal analysis or is the law on Extraordinary Writs enacted precisely for the purpose of enforcing mandatory and ministerial functions of Government Agencies and Officials and thus the request for mandamus/prohibition is not a circumvention of anything but the enforcement of a legal and constitutional right that eliminates unnecessary and costly red tape and illegal proceedings?

39. Is the question here: Right of CAFC to review mandamus/prohibition issue on appeal of final decision or its legal/constitutional obligation to rule on Question of law (enforcement of Trademark Law) introduced both by appeal and Petition for Mandamus/Prohibition/Declaratory Relief by the Flying Tigers Oil and by Flying Tigers International et al, in the Petition at this time, and which is now before the Supreme Court on the same legal and constitutional basis?

40. The CAFC states that it has no jurisdiction over appeal 84-602 under 15 U.S.C. § 1071 (a) (1): Is that the only Jurisdiction of the CAFC Subject of Appeal No. 84-602 for Violation of Legal and Constitutional Rights to due process and equal protection?

41. Is the Order/Act of PTO/TTAB giving due course to an Opposition 63,986 despite its being barred by Statute for being out of time, and there being no written request for extension of time, a final decision or act to appeal to the CAFC before completion of trial of that Opposition on its merits, which has nothing to do with the Legal Question of it being barred by Statute for being out of time, or made subject of a Petition for Mandamus/Prohibition/Declaratory Relief?

42. Is the CAFC, descendent of the Court of Patent and Customs Appeals, involved in a "Good Ole Buddy System" with that agency and its officials that makes the CAFC a hostile environment to bring charges to of corruption in the PTO/TTAB, and therefore congenitally opposed to any claims of violations of constitutional rights to due process and equal protection of the law by the PTO/TTAB?

43. Is the counsel who brings such 'bad news' charges before the CAFC classifiable as 'unknowing' of the customs, precedent and standards of the CAFC and therefore inadmissible as PRO HAC VICE counsel?

44. Is the CAFC obligated by law to rule on the merits of all the Questions of Law presented to it in both Appeal 84-602 and Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief (which it refused to give due course to but mentioned in its final decision (App. C, pp. xxiv-xxvi) that the opposition 63,986 was filed out of time and is therefore barred by Statute 15 U.S.C. § 1063 cited in that appeal and Petition?

45. Is the Supreme Court now obligated by law and the U.S. Constitution to make such ruling on the merits of the issues cited above; and obligated to issue the Writ of Mandamus/Prohibition cited in those issues and cancel the registrations 999,837; 969,394 of the FTLine pursuant to the Petition of the FTiger

Oil for Cancellation thereof for being obtained by misrepresentation, false pretenses, fraud, perjury; because the mark 'FLYING TIGERS' is a false designation for the FTLine, which identity belongs to other people, thus deceiving the public?

46. Was it reasonable and fair for the CAFC to deny the Intervention in Appeal No. 84-602 of the FLYING TIGERS INTERNATIONAL and its International Commander, Morton F. Meads, if it was ever interested in rendering judicial service in this matter?

47. Can the PTO/TTAB legally, pursuant to a mock motion for Summary Judgment, filed for trading material in the denial of the Motion to Dismiss of the FTigers Oil, order the inclusion of an issue for the FTigers Oil to prove, when that issue/matter was never raised by the FTiger Line in its Opposition (already filed out of time and therefore barred by Statute)?

48. Can the PTO/TTAB refuse to send copies of its orders to the FTigers Oil even after formal request, despite the fact that the FTigers Oil is a party to the case wherein the order was issued, without violating the Constitutional rights of the FTigers Oil to due process and equal protection?

49. Is it moral, legal and constitutional for the PTO/TTAB to commit all the wrong doings and violations cited in the Appeal 84-602 and herein petitoners' petition for Mandamus/Prohibition/Declaratory relief in the CAFC and in this Petition, and for the CAFC and the Supreme Court to refuse to grant redress when these disgusting acts/behavior (some in the form of orders or notices or otherwise) are brought to the judicial attention of said federal courts?

50. Does the Flying Tiger Line, having already presented its evidence (consisting only of its registrations

and an illegible document that is not decipherable) in the TTAB (over the repeated objections of the FTigers Oil because its opposition was filed out of time and thus barred by Statute) have any legal or procedural basis for objecting to the raising of these matters to the CAFC when all its evidence was also presented to the CAFC by the Appendix of the FTigers Oil?

51. Federal Case law holds that concealment of the record or of a court document denies a party due process: Does this apply to the PTO/TTAB's failure/refusal to enter a pleading in the Certified List, thus indicating that they have concealed this document, the Pleading of the FTigers listing specifically the averments that the FTiger Line has failed to answer either at all or in any meaningful way; and the refusal to inform FTigers Oil whether FTiger Line filed any deposition, or took the testimony of Carl Asmus as previously announced; and failed to furnish the FTigers Oil of the Order dated December 22, 1982; and refused to send copies thereof to the FTigers Oil?

52. The Rules of Practice require that an Opposition have all its exhibits attached thereto: Does this mean then that the Opposition in 63,986 is null and void for failure to so attach anything thereto, and/or that having failed to so attach, they cannot later alter this condition by filing exhibits not attached to the Opposition, thus violating the 'TIME LIMIT' for filing complete Oppositions, and creating surprise during a trial?

53. Can the PTO/TTAB coach and teach and encourage the FTiger Line in the trial without violating the right of the FTigers Oil Co. to due process and equal protection; which could cease to exist once impartiality is none existent?

54. FTigers Line's verifications are defective and not in conformity with requirements of law; Does a defective 'verification' for an Opposition, and Applications and Section 8 filings nullify those proceedings?

55. Some of the violations of due process and equal protection and/or the Fed. Rules of Civ./Procedure, and Trademark Rules of Practice and/or the Trademark Law are below: Can they be committed by the PTO/TTAB/Commissioner with impunity and without immediate review and redress?

(A) Giving due course to an Opposition filed out of time in violation of Statute (not subject to extension as a Court has discretion to extend without a request) which prescribes exactly 30 days from date of publication unless A WRITTEN REQUEST FOR EXTENSION OF TIME IS FILED. None was filed.

(B) The PTO acting motu propio for the benefit of the FTiger Line even though the latter made no written request for extension of time.

(C) Failing to issue the registration to the FTigers Oil for its mark already processed, approved and published, with the thirty days for filing opposition already expired.

(D) Refusing to correct its mistake/wrongdoing/violation even after being informed by Petitioner FTigers Oil?

(E) Refusing to admit a Supplemental Answer from the FTigers Oil even while allowing the opposition out of time, the latter not being discretionary on the part of the PTO/TTAB.

(F) Allowing the FTigers Line to file a dummy Motion for Summary Judgment for the purpose of raising additional issues not included in the Opposition, and then in an Order directing that the FTigers Oil must prove those issues/matters even though they were never included in the Opposition/Complaint — and thus legally barred from the case, which was already filed out of time.

(G) Note the violation of equal protection and due process: TTAB's refusal of supplemental answer, but allowing FTigers Line to introduce issues by a Sham motion that were never included in the Opposition, but included in an order.

(H) Refusing to require FTiger Line to answer each and every allegation in the affirmative defenses and counterclaim of FTigers Oil, and thus allowing it to plead on a different standard than is applied against the FTigers Oil; and refusing to rule and act in accordance with the law specifying that failure to answer or to answer specifically constitutes an admission.

(I) Failing and refusing to apply those admissions against the FTiger Line respondent herein.

(J) Failing and refusing to acknowledge that said failure to answer constituting admissions amount to grounds for dismissal of the Opposition on the merits, and amount to admissions that the Opposition is perjurious and the applications and affidavits filed by FTiger Line are false.

(K) Removing or not entering in the record the pleading of the FTigers Oil itemizing in detail each and every allegation that the FTiger Line failed/refused to answer (which pleading pinpointed unanswered allegations and cornered the PTO/TTAB in its consistent illegally favorable acts/orders on behalf of the FTiger Line), which failure to enter pleading of FTigers Oil, or the removal thereof from the record, was discovered by the FTigers Oil only from the Certified List finally obtained from the CAFC in Appeal No. 84-602, and which was obviously removed or not entered precisely to make the PTO/TTAB look good on its illegal allowance of FTiger Line to plead a case without answering all the allegations/affirmative defenses of the FTigers Oil, which omission is an act of falsification of the record and fraud for the benefit of FTiger Line.

(L) Untruthfully telling the FTigers Oil that the Official Gazette was months behind in publication and thus an extension is allowable, when in fact upon verification with the Government Printing Office there was no such later publication for months prior to actual publication of November 18, 1980 for the mark of the FTigers Oil, except for one day.

(M) Making amendments or adjustments in Trademark law or Rules of Practice when the Statute specifically states that no amendment can be made that causes damage to anyone in other words adjustments can be made providing that there is no objection).

(N) Denying Motion for Summary Judgment of FTigers Oil even though FTiger Line never filed any opposition thereto; nor separately or in conjunction therewith never answered all the allegations and affirmative defenses of the FTigers Oil (which was not done because to do so under oath falsely would lead to a case or cases for perjury, and if they told the truth FTiger Line would be admitting that it has no basis for opposition and no basis for their applications to use the name of the FTigers Oil Company and its 'tiger head logo'.).

(O) Issuing an order dated December 22, 1982 and never sending a copy to the FTigers Oil (which was learned only in 1984 when a copy of the certified list was sent to the FTigers Oil by the CAFC showing that order) thus prejudicing the FTigers oil in the prosecution of its Petition to Cancel registrations of the FTigers Line.

(P) Refusing to send FTigers Oil copy of said order even after formal request has been made.

(Q) Sending another order to the address of the FTiger Line instead of the address of the FTigers Oil

thus preventing FTigers Oil from knowing what is transpiring and what status the PTO/TTAB has given to the case/controversy.

(R) Giving to FTiger Line four additional chances to present evidence since the order of December 22, 1982 (serve sent to FTigers Oil), and three additional chances after the FTiger Line completed its evidence without any witnesses, and only one illegible undecipherable document unidentified and unsigned, with three registrations that are subject to cancellation proceedings on grounds of perjury, fraud for two and descriptive character for one, whereas the FTigers Oil would have only one chance — although that is not necessary because the opposition proceedings are illegal in the first place because of having been filed out of time without any written request for extension of time, (which nonexistent written request by law must be filed prior to the expiration of the 30-day period).

(S) Denying various things to the FTigers Oil but quickly and readily granting approximately the same things to FTiger Line, such as copies and answers to queries.

(T) Failing/Refusing to answer repeated requests of FTigers Oil as to whether any deposition has been filed by the FTiger Line.

(U) Continuously and consistently demonstrating discrimination against oil and in favor of airline, with all those connote and signify subliminally.

(V) Failing/Refusing to Require FTiger Line to answer allegations of false designation in use of mark 'FLYING TIGERS' (owned by the FTigers International and Flying Tigers Oil and Flying Tigers Party in common law) by the FTiger Line.

(W) Violating the confidentiality of the Application of FTigers Oil prior to registration by showing and furnishing copy thereof to FTiger Line, (which prior to registration is prohibited by the Trademark Law).

(X) Failure to rule and allow Motion for Leave of Court to amend Answer with Affirmative Defenses and Counterclaim of Petition for Cancellation.

(Y) Failure to disqualify Fruge, Rice, Quegg, Sims, Hutt, Chapman, Mossinghoff after charges of favoritism were failed.

(Z) Allowing notarization of affidavit for FTiger Line in proceedings in the PTO when the name of that notary is essentially the same as a member of the law firm of FTiger Line, Lyon and Lyon, which is prohibited by the Federal Rules of Civil Procedure.

(AA) Allowing defective oath, contrary to the requirements of the Trademark Rules of Practice, for FTiger Line in proceedings before PTO/TTAB.

(BB) Failing to publish amendments of rules or proposed amendment of rules in the Official Gazette and Federal Register, beneficial to the FTiger Line and prejudicial to herein Petitioners.

(CC) Giving of legal advice openly to FTiger Line and its counsel and telling them how to prevail over the FTigers Oil.

(DD) Allowing private contact with key persons in the PTO/TTAB in order to arrange favorable treatment for the FTiger Line.

(EE) Failing to inform FTigers Oil of its decision/action on its Motion for Leave of Court to amend its Answer with Counterclaim of cancellation of registrations of FTiger Line.

(FF) Failing to inform FTigers Oil of rulings on the filing of various papers by the FTigers Oil.

(GG) Failing to report to the FBI the keeping of papers by the FTiger Line that belong to the FTigers Oil and which were sent to the address of FTiger Line.

(HH) Refusal to resolve FTigers Oil's motion for reconsideration of order dated July 15, 1982 denying motion to dismiss.

(II) Answering inquiries and requests of FTiger Line always and quickly and formally but not answering those of FTigers Oil.

(JJ) Failure to resolve Motion for Reconsideration of FTigers Oil of order dated July 15, 1982 on FTiger Line's simulated mock motion for Summary judgment on the two matters introduced thereby but not in issue.

(KK) Transforming and considering FTigers Oil's Motion for Summary Judgment as a Motion for Judgment on the Pleadings when in fact said motion did not ask for resolution of all the issues in the case before PTO/TTAB illegally initiated out of time.

(LL) Stating that the objection of FTigers Oil to some illegible and undecipherable document without certification was made too late, but which is discretionary under the rules, but allowed FTiger Line to file Opposition/complaint very much out of time, without any written request for extension of time or a Certificate of Mailing, which is not discretionary and fixed by Statute.

(MM) Issued an ORDER in letter form that no order should be issued prejudicial to the FTiger Line during an investigation for exclusion of FTiger Line's

counsel for misrepresentation and fraud, but without equal treatment that no order can be issued against the FTigers Oil during the same period.

(NN) Whitewashed charge of fraud without seeking particulars from FTigers Oil and its counsel, and without asking FTigers Oil for any evidence that it has to prove the charge.

(OO) Placing in ORDER the misrepresentation of the FTiger Line and its counsel, which falsehood is evident from the very document involved, which is in the possession of the PTO/TTAB, thus showing outright dishonesty, but total subordination to the wishes of the FTiger Line and its counsel.

(PP) Failing and refusing to correct said false statement in said order after it was called to the attention of PTO/TTAB — thus constituting willful falsification of record against FTigers Oil and in favor of FTiger Line and its counsels.

(QQ) Pretended that the telephone company gave it the address of the FTigers Oil in Phoenix, Arizona, when in fact it was the address of the FTiger Line, which type 'mistake' is inconceivable, unless part of a plan in the PTO/TTAB.

(RR) Failed/Refused to send a complete copy of the Certified List to the FTigers Oil after appeal; and after repeated complaints sent only page 3 thereof consisting of only three items (which reluctance is understandable since it reveals orders not sent to FTigers Oil and pleadings of FTigers Oil never resolved, and the material pleading itemizing the admissions by failure to answer of the FTiger Line which was either removed or not entered in the record of the subject case.

(SS) Followed a course to effectively eliminate discovery for the benefit of the FTiger Line, who has much to hide.

(TT) Continually applying the rules against the FTigers Oil even on minor considerations but always setting aside and disregarding the rules for the benefit of the FTiger Line.

(UU) Failing and refusing to apply the rules on defaults and admission against the FTiger Line.

(VV) Failing to rule that when the FTiger Line does not oppose the Motion for Summary Judgment of the FTigers Oil that is a type of default not subject to arbitrary disregard by the PTO/TTAB.

(WW) Failing to rule that a default by FTiger Line on a Motion for Summary Judgment filed by FTigers Oil in regard to 'failure of FTiger Line to deny averments of FTigers Oil' constitutes admissions and a triple default because the FTiger Line had already previously failed to deny the same material averments when specified in the affirmative defenses and Counterclaim and Motion to Dismiss of the FTigers Oil.

(XX) Committing the wrongdoing cited in Questions Presented 27 (00) in the Brief of FTigers Oil in its Brief in Appeal 84-602 before CAFC.

(YY) Committing the wrongdoing and acts and failures to act of favoritism cited in Questions Presented No. 27 (PP. to III inclusive) in the Brief of FTigers Oil in Appeal No. 84-602 before the CAFC.

(ZZ) Took over one year to send copies of Registrations of Appellee 1,004,930, and 969,394 and 999,837 to herein Appellant;

(AAA) never sent Appellant copy of ORDER dated December 22, 1982, C.L. No. 31 initially; and never sent copy when specifically requested after Appellant learned about such an ORDER from Page 2 of the Certified List received in January, 1984 (apparently after CAFC or its clerk took some action);

(BBB) never sent copy of ORDER CL No. 31 after request for copy by Applicant when latter read of 'reference to previous settings of trial dates of which Appellant had no knowledge;

(CCC) never sent pages 1 and 2 of Certified List until apparently somebody intervened;

(DDD) never forwarded at expense of Appellant after at least two requests certified copies or plain copies of complete file wrapper of Applicant-Appellant and 3 Registrations cited No. 1 above;

(EEE) asked for information two times on filing of any deposition by Appellee yet never replied;

(FFF) never included Appellant's REPLY TO OPPOSITION TO MOTION FOR RECONSIDERATION in Certified list, and a Part of Appellant's MOTION FOR Summary Judgment by reference and listing all the paragraphs or averments not answered or denied by OPPOSER-APPELLEE;

(GGG) sent papers belonging to Appellant to address of Appellee;

(HHH) continually complains against Appellant about mere metters of form but fails to rule against Appellee at any time on any thing even major violations of the rules and even when it concedes a major motion by failure to oppose;

(III) typically, in ORDER dated January 27, 1984 OFF/PAT/TTAB directs all its criticism against Appellant despite fact that Appellee has filed more papers during that period than Appellant.

56. How many times can PTO/TTAB deny or refuse requests by one or more of the herein Petitioners for documents in and information on the trial of 63,986

before the constitutional rights to due process and equal protection of one or more of petitioners is considered violated by the United States Supreme Court, particularly said rights of the Flying Tigers Oil Company, Inc. a party to said case?

57. Statute law and case law prohibit registration as trademark descriptive words or phrases such as 'Long Island Railroad', and 'Steel Window Mfg.' thus the registration of the words 'Flying Tiger Line' is illegal: Is the influence exerted by the FTiger Line on the PTO/TTAB and later the CAFC to first register an obviously prohibited descritive phrase and then to refuse to consider and resolve even one single issue in appeal No. 84-602 and the petition for Certiorari/ Mandamus, Prohibition/Declaratory Relief including the immediate cancellation of registration of said descriptive phrase legal influence legally and constitutionally applied?

58. Is it equal protection for the PTO/TTAB to allow an opposition to be given due course after filing out of time and barred by statute and then declare by order that FTigers Oil's Supplemental Answer (Petitioner herein being forced to answer) is ruled out as well as its affirmative defenses as part of the pleadings?

59. Is it equal protection for the PTO/TTAB to rule out by order (see appendice 'G', pp. xxxiv-xxxviii) the supplemental answer on grounds that there was no formal motion but having already given due course to the opposition filed out of time and barred by statute even though FTiger Line never even filed a request for extension of time, which is a condition precedent of the law before an extension can be allowed and which must be filed before the 30-day period from publication expires?

60. Is it equal protection for the PTO/TTAB to refuse to rule on the motion for leave to file supplemental answer after it is filed?

61. Is it equal protection for the PTO/TTAB to rule out as pleading the supplemental answer and exhibits and affirmative defenses while in effect allowing FTiger Line to amend its opposition (already filed out of time and illegally given due course) by filing a Sham Motion for Summary Judgment introducing two new issues therein not stated in the opposition (see order appendice 'G' pp. xxxiv-xxxviii)?

62. Is it equal protection for the PTO/TTAB to falsify its orders, including the simulation of a falsification to disparage FTigers Oil when it has the original records on the application and is charged with full knowledge that no such falsification exists as stated falsely by American Counsel for FTiger Line? (See Motion for Reconsideration in Appendix in 84-602 in CAFC).

63. Is it equal protection to give FTiger Line three chances to present evidence in chief and the FTigers Oil only one chance?

64. Is it equal protection for the PTO/TTAB to give written suggestions or instructions on how to win the case to counsel for FTiger Line while refusing to even send copies of orders and essential information formal'y requested to the FTigers Oil?

65. Is it not logical when statute law is violated by the PTO/TTAB and FTiger Line on getting an opposition admitted and given due course out of time and barred by statute that a long successions of illegal acts by both FTiger Line and the PTO/TTAB are inevitable and must be protected in order to sustain the original criminal and illegal act of conspiracy to violate the trademark law?

BEST AVAI

Appendice 'C'

Note: This opinion will not be published in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Appeal No. 84-602

THE FLYING TIGERS OIL COMPANY, INC.,
Appellant,

v.

THE FLYING TIGER LINE, INC.,.
Appellee.

DECIDED: October 5, 1984

Before KASHIWA, Circuit Judge, SKELTON, Senior Circuit Judge, and NIES, Circuit Judge.

DECISION

The Flying Tigers Oil Co., Inc. seeks review of various preliminary decisions of the Trademark Trial and Appeal Board (board) in connection with Opposition No. 63,986, including the board's denial of its motion to dismiss and motion for summary judgment. The appeal being premature, we *dismiss* for lack of jurisdiction. In addition, the Flying Tigers Oil Co., Inc's petition for a writ of mandamus is *denied*. All other motions are dismissed as moot.

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DISCUSSION

The jurisdiction of this court to entertain appeals from the board is derived from 15 U.S.C. § 1071 (a) (1), which provides in pertinent part: "An applicant for registration of a mark . . . who is dissatisfied with the *decision* of the . . . Trademark Trial and Appeal Board . . . may appeal to the United States Court of Appeals for the Federal Circuit. . . ." (emphasis added).

In *United States Treasury* v. *Synthetic Plastics Co.*, 341 F.2d 157, 144 USPQ 429, 429-430 (CCPA 1965), it was held that the term "decision" in the present context, "means a dispositive decision in which a right has been adjudicated."[1] The denial of a motion to dismiss is not dispositive. See *Wagner Shokai, Ins.* v. *Kabush ki Kaisha Wako*, 699 F.2d 1390, 217 USPQ 98 (Fed. Cir. 1983) and cases cited therein.

Nor does the denial of a motion for summary judgment give rise to an appealable decision. *R. G. Barry Corp. v. Mushroom Makers, Inc.*, 609 F.2d 1002, 204 USPQ 195 (CCPA 1979). It does not adjudicate a right nor is it dispositive of any issue in the proceeding. Since there has been no "decision" within the meaning of 15 U.S.C. § 1071(a)(1), this court has no jurisdiction over the present appeal based upon that section. A mere charge that the board has committed errors provides no basis of this court's jurisdiction under § 1071 (a)(1). This court reviews final decisions of the board. We are not empowered to exercise supervisory authority during proceedings.

Alternatively, appellant seeks a writ of mandamus directing the board to dismiss Opposition No. 63,986, and

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[1] This court has succeeded to the jurisdiction of the Court of Customs and Patent Appeals, Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 127 (a), 96 Stat. 25, 38, and has adopted its precedents. *South Corp. v. United States*, 690 F.2d 1368, 215 USPQ 657 (Fed. Cir. 1982).

to register appellant's mark. Under 28 U.S.C. § 1651, the All Writs Act, this court is empowered to issue writs are "necessary or appropriate in aid of" its jurisdiction. The issuance of a writ of mandamus is an extraordinary remedy which has been granted by this court only in limited circumstances. Mandamus is not appropriate merely to circumvent normal appeal procedures.

Appellant argues that mandamus is justified in this case because appellee's opposition papers were assertedly "filed out of time." Allowing the opposition to proceed, therefore, purportedly exceeds the power of the board and violates a variety of appellant's constitutional rights.

Having reviewed the board's actions in the opposition proceeding, however, we see nothing that might frustrate our potential jurisdiction over this case. More particularly, the timeliness issue, if properly raised before the board, could be reviewed on appeal.. *See In re Precision Screen Machines, Inc.*, 729 F.2d 1428, 1429, 221 USPQ 1034, 1034-1035 (Fed. Cir. 1984). Appellant's petition for a writ of mandamus is, accordingly, denied.

In an order dated March 22, 1984, this court granted Mr. Alberto C. Soriano permission to represent The Flying Tigers Oil Company, Inc. in this appeal. Mr. Soriano has filed numerous papers which indicate a lack of familiarity with this court's functions, procedures and standards for counsel. Mr. Soriano's right to represent appellant terminates with this decision by the court. The court advises The Flying Tigers Oil Company, Inc., that it must be represented by an attorney who is a member of the bar of this court in any future matters brought before us.

Appendice 'C-1'

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

THE FLYING TIGERS OIL CO., INC.,

Appellant,

v.

THE FLYING TIGER LINE, INC.,

Appellee.

Appeal No. 84-602

On Motion to Intervene

O R D E R

The motion of Morton F. Meads and/or Flying Tigers International filed March 12, 1984, for leave to intervene is *denied.*

In view of the order of this court dated March 22, 1984, admitting Mr. Albert C. Soriano to the bar of this court *pro hac vice* for the purpose of appearing on behalf of appellant in the above-captioned appeal, the need set forth in the motion for leave to intervene is obviated.

FOR THE COURT

Marion T. Bennett
Circuit Judge

March 30, 1984

Appendice 'C-2'

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

THE FLYING TIGERS OIL CO., INC., Appellant, v. THE FLYING TIGER LINE, INC., Appellee.	Appeal No. 84-602 On Motion to Intervene

O R D E R

The motion of Robert Zlomke filed March 12, 1984, for leave to intervene is *denied.*

In view of the order of this court dated March 22, 1984, admitting Mr. Albert C. Soriano to the bar of this court *pro hac vice* for the purpose of appearing on behalf of appellant in the above-captioned appeal, the need set forth in the motion for leave to intervene is obviated.

FOR THE COURT

Marion T. Bennett
Circuit Judge

March 30, 1984

Appendice 'D'

Is a notice dated February 13, 1981 that due course has been given to an opposition filed on January 5, 1981 (Out of Time), and that the Flying Tigers Oil Company, Inc. must answer. This is made an appendice by reference to the record of the PTO/TTAB, copy of which the petitioners do not have. See the Certified List.

Petitioners cannct supply a copy thereof because the Patents Office refuse to send copies of orders to us, and refuses to answer letters of one or more of the petitioners, on the subject of this case.

This document is made an appendice by reference to how the 'decision' to give due course to an opposition filed out of time and therefore inadmissible by statute law, and thus the commissioner/PTO/TTAB have no discretion because no request for extension of time was filed before the expiration of the due date for an opposition, which date must be within the 30-day period after date of publication, which date is November 18, 1980.

Appendice 'E'

Is a notice dated March 6, 1981 that due course has been given to an Opposition Filed on January 5, 1981 (out of time), and that the Flying Tigers Oil Co., Inc. must answer.

The same statements above for Appendice 'D' also apply to this appendice.

Appendice 'H'

Is an Order dated December 22, 1982, the exact contents of which are not known to petitioners because a copy thereof was never delivered to Flying Tigers

Oil Co., Inc. and herein petitioners only came to know about the order from the Certified List furnished by the clerk of court of the CAFC, after months of evasion by the PTO/TTAB. From the Certified List there is the indication that it is an order that denies something and sets trial dates. The Certified List is in the Record of Appeal 84-602, and also in this Appendix. The Flying Tigers Oil Co., Inc. has requested copies of that order from the patents office TTAB but they have refused to send it, which is just one of the many documents and official information about this case which have been requested but which the PTO/TTAB has refused to send to one or more of the herein petitioners. Thus necessitating making said order an appendice by 'Reference' to the record of the PTO/TTAB.

Appendice 'B'

Appendice 'B' is the list of Questions Presented in the U.S. Court of Appeals for the Federal Circuit. This appendice is by reference to the Questions presented actually filed in the CAFC. Reference is also made to the same list filed as Appendice 'B' of the Typewritten Petition for Certiorari filed by Petitioner Robert Zlomke in the Flying Tiger Line and its counsel has four copies, the the printed petition on the same subject matter of various petitioners. The CAFC has 24 copies of this Appendice. the Flying Tige Line andi ts counsel has four copies, the PTO/TTAB has the Questions through the Notice of Appeal and QP copy of which was sent to that office.

Appendice 'F'

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address:
COMMISSIONER OF PATENTS AND TRADEMARK
Washington, D.C. 20231

Opposition No. 63,986

MAILED
SEP 16, 1981
PAT. & T. M. Office

The Flying Tiger Line, Inc.
v.
The Flying Tigers Oil Company, Inc.

On January 5, 1981, opposer, The Flying Tiger Line Inc., filed a notice of opposition to prevent the registration of applicant's mark in application Serial No. 86,288, published in the Official Gazette of November 18, 1980. Applicant responded with a pleading entitled "Motion to Dismiss and Counterclaim or Answer to Opposition with Counterclaim," on April 9, 1981.

The answer, however, is not a proper vehicle for a motion but rather serves to join issues in a proceeding. If applicant wishes to be heard on a motion to dismiss, a separate motion in compliance with Trademark Rule 2.127(a) should be filed. That rule provides in part that motions shall be made in writing and shall contain a full statement of the grounds therefor and that any brief or memorandum in support thereof shall accompany or be embodied in the motion.

Accordingly, no consideration will be given to that portion of applicant's affirmative defense which moves to dismiss the notice of opposition for having been filed out of time.

In its pleading, applicant has included a counterclaim for cancellation of Registration Nos. 999,837 and 969,394. Applicant has failed to submit the required fee for each class sought to be cancelled in the registrations. See Sections 14 and 31 of the Trademark Act of 1946 and Trademark Rule 2.111.

Finally, it is noted that applicant's "answer and counterclaim" is a very lengthy and argumentative document which cannot be considered a short and plain statement of its claims or defenses. See Fed. R. Civ. P. 8(b). Also, Rule 8(e) (12) of the Federal Rules of Civil Procedure requires that each averment of a pleading be simple, concise, and direct. The function of pleadings under the Federal Rules is to give fair notice of the claims or defenses asserted so as to enable the adverse party to answer and prepare for trial. Good practice demands that the pleadings be "short" and 'plain", even in matters where the rules specifically require particularity. See *Moore's Manuel: Federal Practice* and Procedure, Section 10.04 and Fed. R. Civ. P. 9(b).

Accordingly, applicant is allowed until October 16, 1981 to submit an amended motion to dismiss in accordance with Trademark Rule 2.127(a), and a separate amended answer and counterclaim for cancellation of opposer's registrations including the required fee for each class sought to cancelled in the registrations.

In view thereof, opposer's request for an extension of time respond to the motion to dismiss is considered moot.

Finally, it appears that some delay has been occasioned by the fact that applicant's papers have not been served on opposer's attorney by air mail. In the

future applicant is requested to serve its papers sent from overseas by air mail.

R. L. SIMMS
Acting Member, Trademark
Trial and Appeal Board

cc:

Lyon & Lyon
800 Wilshire Boulevard
Los Angeles, California 90017

The Flying Tiger Oil Company, Inc.
2540 E. Indian School Road
Phoenix, Arizona

Appendice 'G'

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address:
COMMISSIONER OF PATENT AND TRADEMARK
Washington, D.C. 20231

Opposition No. 63,986

MAILED
JUL 18, 1982
PAT. & T.M. Office

The Flying Tiger Line, Inc.
v.
The Flying Tigers Oil Company, Inc.

An application has been filed by The Flying Tigers Oil Company, Inc., an Arizona Corporation, to register the mark "FLYING TIGERS OIL COMPANY" and design for oil-lease evaluation services. Applicant recites a date of first use of 1953; and date of first use in commerce of 1959.

Registration has been opposed by the Flying Tiger Line, Inc. on the grounds that opposer is the owner of Registration No. 999,837 for the mark "FLYING TIGERS"; Registration No. 1,004,930 for "FLYING TIGER LINE"; and Registration No. 969,394 for the design of a tiger head, all three registrations being for air cargo transportation services; that opposer is a subsidiary of Tiger International a diversified company which has other subsidiaries which deal with leasing of tank cars; that opposer contracts with oil companies and other air carriers to provide fuel services; the mark "FLYING TIGERS" is a strong and famous mark known throughout the world; that applican't mark so resembles opposer's mark as to be likely to cause confusion, mistake or deception; and that registration to applicant will dilute the distinctiveness and good will associated with opposer's mark.

Applicant filed on April 4, 1981, an answer with a counterclaim and a motion to dismiss. The Board, in an order dated September 16, 1981, explained that the answer was not a proper vehicle for a motion to dismiss; that the two papers must be separate; that the answer must be a short and plain statement of applicant's claims or defenses; and that the proper fee had not been submitted for the counterclaims. On October 20, 1981, applicant filed a second answer and counterclaim. Since the second answer does contain admissions and denials and helps frame the issues for this proceeding, it will be accepted as applicant's pleading.(1)

The proper fee for counterclaims against two of opposer's registrations have now been paid. However, the verification is unacceptable as it is not accordance with Section 11 of the Lanham Act, inasmuch as it was executed in Manila, Philippines. The verification must be made before a diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country whose authority is proved by a certificate from a diplomatic or consular officer of the United States. The counterclaim cannot be considered until it is properly verified. Applicant is

---

(1) In applicant's cover letter dated October 26 1981, applicant requested that the Office mail to opposer a copy of the 31 exhibits attached to applicant's answer. This request is denied and applicant is reminded that under Trademark Rule 2.119, applicant must serve on the adverse party a copy of each paper filed in a proceeding. Strict compliance is required and it is the responsibility of the parties to so comply. Accordingly, applicant is allowed until August 13, 1982 in which to serve a copy of the 31 exhibits upon opposer and to submit to the Board of statement that such service has been made, failing which the exhibits will be stricken. In connection with foregoing, it should be noted that exhibits attached to pleadings cannot be considered as evidence on behalf of the party who filed them unless they are identified and introduced into evidence in the same manner as other exhibits during the testimony period of suchp arty. See: Trademark Rule 2.126.

allowed until August 13, 1982 to submit the proper verification.(2)

This case now comes up on applicant's motion to dismiss filed October 28, 1981; and opposer's motion for summary judgment filed November 9, 1981. Each party has a response thereto.

Turning first to applicant's motion to dismiss, applicant asserts that opposer "plagiarized" the marks from three entities, namely, The Flying Tigers Oil Company, Inc., The Flying Tigers Party, and The Flying Tigers International that applicant claims use since the 1940's; that opposer did not use the logo of a design of tiger head until recent years that opposed claimed five years uncontested continuous use under Section 8 and 15 while applicant's present application was pending; and that opposer has acquired in use of the mark by applicant.(3)

Opposer argues that although applicant's motion is difficult to intepret and to respond to, opposer believes applicant's major points are that applicant was the first to use the marks in question; that opposer's registrations were fraudulently obtained; and that the marks are different. Opposer argues that no formal grounds for dismissal have been stated and that if applicant's motion is construed as one for summary judgment, there are genuine issues of fact to be considered and summary judgment should be denied.

We are inclined to agree with opposer that is, applicant's motion is extremely difficult to construe. However, it is construed by the Board as a motion to dis-

(2) Opposer's response to the counterclaim filed on November 9, 1982 is noted.

(3) Applicant requested that opposer be required to deposit $150.00 for the credit of applicant to cover the cost of the this opposition. Applicant is advised that there is no authority for such a request.

miss, and as such it does not state a proper ground on which to dismiss a proceeding. In any event, opposer has alleged that it is the owner of three registration, that applicant and opposer's marks and services are substantially similar, and that confusion results in damage to opposer. Thus, opposer has stated a claim which, if proved, would be sufficient on which to grant relief. Therefore, applicant's motion to dismiss is denied.

Turning now to opposer's motion for summary judgment, opposer asserts that no proper specimens evidencing use of the mark prior to the filing date were ever supplied to the Office, and that the file shows there has been no use of the mark in any form of commerce regulable by Congress.

The application was originally refused registration by the Office Examining Attorney as showing trade name use only. Applicant submitted substitute specimens which were advertisements later identified as being from the *Orient News*, a newspaper in Manila, Philippines. As opposer points out there was no affidavit supporting use of these substitute specimens and although the paper was not dated, a legal notice within the paper was dated December 4, 1976, which is after the filing date of May 6, 1976.

The application is based on an allegation of use in "territorial" commerce, while the applicant is a corporation of the state of Arizona.

Applicant argues that it acted in accordance with requirements of the Trademark Examiner; that the statements in the application are under oath; that the "territory" referred by applicant is the United States territorial boundaries and further that applicant could and would state in an affidavit that its use in commerce which can be lawfully regulated by Congress was prior to May 1976.

In this case there are genuine issues of material fact yet to be resolved, including whether applicant used the service mark prior to the filing date of the application and whether applicant used the mark prior to that date in commerce regulable by Congress.

The party opposing the motion for summay judgement should be given the benefit of the doubt as to whether genuine issues of fact exist. See: *Aloe Creme Laboratories, Inc., v. Aloe 99, Inc.*, 179 USPO 491 (CCPA 1973); and *Litton Industries, Inc. v. Litronix Inc.*, 198 USPO 280. (CCPA 1976). Accordingly, opposer's motion for summary judgment is denied.

Applicant filed on April 14, 1982, and on June 1, 1982, suplemental answers with affirmative defenses, and supplemental information and exhibits. In the absence of formal motions to amend the answer and counterclaim submitted on October 20, 1981, the "supplemental answers and affirmative defenses" will not be considered part of applicant's pleadings.

The petition for exclusion of opposer's attorneys has been denied in an order of the Deputy Commissioner dated June 17, 1982.

Proceedings herein are suspended pending applicant's response to this action.

J. E. RICE

L. E. FRUDE

R. L. SIMMS
Members, Trademark
Trial and Appeal Board

Appendice 'I'

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address:
COMMISSIONER OF PATENTS AND TRADEMARK
Washington, D.C. 20231

Opposition No. 63,986

MAILED
JUN 21, 1983
PAT. & T. M. Office

The Flying Tiger Line, Inc.
v.
The Flying Tigers Oil Company, Inc.

This case now comes up on the following matters and motions:

(1) Applicant's motion to admit copies of the files of application Serial No. 86,288; and Registration Nos. 969,394; 999,837; and 1,004,930 without certification (filed February 22, 1983);

(2) Applicant's support of its motion for reconsideration of the TTAB decision denying applicant's motion to dismiss (filed February 22, 1983);

(3) Applicant's reply to opposer's opposition to applicant's motion for reconsideration of the Board's denial of applicant's motion to dismiss (filed March 2, 1983); and

(4) Applicant's motion for summary judgment as to certain issues (filed March 10, 1983).

Turning first to applicant's motion to admit copies of the files which are not certified, applicant's attention is directed to Rule 2.122(a), which provides, in

part, that the file of the application against which an opposition is filed and of the registration against which an affirmative defense requesting cancellation is filed, form part of the record of the proceeding without any action by the parties.

In this case, application Serial No. 86,288, is the subject of the opposition proceeding, and Registration Nos. 969,394 and 999,837 are the subject of the counterclaims to cancel. Therefore, those three files are considered of record without certification under Rule 2.122(a).

Opposer's third pleaded registration (Reg. No. 1,004,930) is not the subject of a counterclaim to cancel in this proceeding. Therefore, the file of Reg. No. 1,004,930 is not considered of record under Rule 2.122(a). If applicant wishes to introduce in evidence the file of Reg. No. 1,004,930, it must file a copy thereof in this proceeding together with a notice of reliance during its testimony period. Rule2.122(c). This need not be a certified copy.

Since three of the files listed in applicant's motion to admit copies is deemed moot. The remaining file may be introduced as explained above.(1)

All three of the other papers filed by applicant essentially deal with the same matter.

Opposer filed no response to any of these papers. Under Rule 2.127, if a party fails to file a brief in oppositon to a motion, the motion *may* be treated by the Board as conceded. In the circumstances of this

(1) Opposer should note that in order to make its remaining pleaded registration of record, opposer must establish that the registration is still subsisting and owned by opposer. See Peter's Sportswear Co., Inc. v. Peter's Bag Corporation, 187 USPQ 647 (TTAB 1975) for the various methods of making a pleaded registration (which is not the subject matter of a counterclaim) of record.

case, however, applicant's papers regarding dismissal and summary judgment will be determined on the merits.

Applicant moves for summary judgment on the following issues set forth by applicant: (1) Is opposer bound by Rule 8(b) and (d), FRCP, requiring opposer to answer each and every averment of fact in the counterclaim by denial, admission, or disclaimer of knowledge? (2) Is opposer bound by Rule 8, FRCP, providing that failure to deny specifically constitutes an admission of the numbered avertment? and (3) Is opposer by its failure to specifically deny the numbered averments in applicant's affirmative defenses (counterclaim), deemed to have admitted same?

Applicant's motion for summary judgment and requests for dismissal may all be construed as a motion for judgment on the pleadings (Rule 12(c), FRCP) since they essentially seek judgment on the basis of what applicant believes are admissions in opposer's reply to applicant's counterclaims.

In its motions, applicant essentially asserts that opposer did not specifically number the paragraphs in its response to the affirmative defenses (counterclaims) as required by Rule 10(b), FRCP; that opposer did not specifically deny the numbered paragraphs of applicant's affirmative defenses (counterclaims); that any averment not specifically denied is deemed admitted under Rule 8 (d), FRCP; and that therefore, opposer's reply to to the counterclaims constitutes an admission of any averment not specially denied.

Proceedings before the Board are governed by the Trademark Rules and the Federal Rules of Civil Procedure, as made applicable by Trademark Rule 2.116. All parties to a proceeding before the Board are bound by those rules.

Turning to applicant's third reason for judgment, the Board has carefully reviewed applicant's counterclaims, and opposer's reply thereto.

Applicant's counterclaims consist of numbered paragraphs 10-28. Paragraph 28 (made up of subparts A-H) is apparently a summation of the grounds for applicant's counterclaims contained in paragraphs 10-27. Opposer, in its reply to the counterclaims, denied the allegations of paragraph 28(B), (C), (D), (E), and (G); admitted in part and denied in part paragraph 28(F); and denied paragraph 8(H) and asserted that copies of applicant's exhibits 1-31 listed therein have not been received by opposer.

Paragraph 23(A) of applicant's counterclaim incorporates by reference paragraphs 1-27 of its answer and counterclaims[2] Opposer set forth a general statement of its position, explaining that in view of the nature of applicant's counterclaims it would be difficult to respond to each specific paragraph referred to in paragraph 28(A).

Rule 8(f), FRCP, provides that "All pleadings shall be so construed as to do substantial justice."

This mandate is the heart of the rules on pleadings, and under the Federal Rules of Civil Procedure, pleadings are to be judged by substance rather than form. See 2A *Moore's Federal Practice*, Section 9.34, p. 8-299.

Although Rule 10(b), FRCP, requires separate numbered paragraphs, in this case, opposer has explained why the reply to the counterclaims was set forth in the manner it was. Moreover, we agree with opposer that,

---

(2) Applicant is advised that paragraphs 1-9 forming applicant's answer to the notice of opposition require no responsive pleading from opposer. Only the paragraphs which form the counterclaims to cancel require a responsive pleading. See Rule 7, FRCP.

in view of the nature of applicant's counterclaims pleading, it would have been difficult to respond to applicant's counterclaims by separate numbered paragraphs. Opposer has clearly denied the essential allegations of applicant's counterclaims. We believe opposer's reply to the counterclaims meets the requirements of the Federal Rules of Civil Procedure.

Since opposer has denied the essential allegations of the counterclaims, since the pleadings are not to be judged by form rather than substance, and in order to do substantial justice, we find that in this case opposer has denied the averments of the counterclaims under Rule 8(d), FRCP.

Accordingly, all three of the papers submitted by applicant seeking relief through dismissal or summary judgment based on Rule 8(d), FRCP, (construed by the Board as requests for judgments on the pleadings), are denied.

In view of the delay occasioned in ruling on these matters, trial and discovery dates are reset as indicated below:

THE PERIOD FOR DISCOVERY TO CLOSE	July 11, 1983
Testimony period for Flying Tiger Line, Inc. as plaintiff in the opposition to close (opening thirty days prior thereto)	September 9, 1983
Testimony period for The Flying Tigers Oil Company, Inc. as defendant in the opposition and as plaintiff in the counterclaim to close (opening thirty days prior thereto)	November 8, 1983

Testimony period for Flying Tiger Line, Inc. as defendant in the counterclaim and its rebuttal testimony as plaintiff in the opposition to close (opening thirty days prior thereto)	January 9, 1984
Rebuttal testimony period for The Flying Tigers Oil Company, Inc. as plaintiff in the counterclaim to close (opening thirty days prior thereto)	February 23, 1984

Briefs shall be filed in accordance with Rule 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Rule 2.128(c).

L. E. FRUGE

J. E. RICE

R. L. SIMMS
Members, Trademark
Trial and Appeal Board

APPENDICE 'J'

TRADEMARK ACT OF 1946, AS AMENDED

Public Law 489, 79th Congress, Chapter 540, approved July 5, 1946; 60 Stat. 427

The headings used for sections and subsections or paragraphs in the following reprint of the Act are not part of the Act but have been added for convenience in using this reprint. Prior trademark statutes may be found in Title 15, Chapter 3, of the U.S. Code and in the Statutes at Large. The present Act forms Chapter 22 of Title 15 of the U.S. Code and the U.S. Code citations have been placed at the beginning of each section and subsection. Included are amendments made to section 7(a) by the Act of August 17, 1950, Public Law 710, 81st Congress, 64 Stat. 459; to section 21 by the Act of July 19, 1952, Public Law 593, 82nd Congress, 66 Stat. 792; to sections 17, 20, 21, 24, and 31 by the Act of August 8, 1958, Public Law 609, 85th Congress, 72 Stat. 540; to section 44(d) by the Act of October 3, 1961, Public Law 333, 87th Congress, 75 Stat. 748; to sections 1(a)(1), 2(d), 6, 7(a), 7(d), 7(e), 7(f), 9, 10, 12(a), 12(c), 13, 14, 15, 16, 21, 23, 24, 29, 30, 32, 33, 35, 44(b), 44(e), and 45 by the Act of October 9, 1962, Public Law 772, 87th Congress, 76 Stat. 769; to section 31 by the Act of July 24, 1965, Public Law 83, 89th Congress 79 Stat. 260; to section 29 and the term "Patent Office" and "Commissioner of Patents" by the Act of January 2, 1975, Public Law 596, 93rd Congress, 88 Stat. 1949; to sections 13, 21, and 35 by the Act of January 2, 1975, Public Law 600, 93rd Congress, 88 Stat. 1955; and to section 42 by the Act of October 3, 1978, Public Law 410, 95th Congress, 92 Stat. 903.

NOTE: The terms "Patent Office and "Commissioner of Patents" should be understood as meaning "Patent and Trademark Office"

and "Commissioner of Patents and Trademarks", respectively, Sec. 3, Public Law 99.598, Jan. 1976, as Stat. 1949.

* * *

Sec. 7(e) (15 U.S.C. 1057e). Copies of Patent and Trademark Office records as evidence

Copies of any records, books, papers, or drawings belonging to the Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name by an employee of the Office duly designated by the Commissioner, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the fee required by law shall have such copies (Amended Oct. 9, 1962, 76 Stat. 769).

* * *

Sec. 12(a) (15 U.S.C. 1062a). Examination of application—Publication of mark when entitled to registration

Upon the filing of an application for registration and payment of the fee herein provided, the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, the Commissioner shall cause the mark to be published in the Official Gazettee of the Patent and Trademark Office: *Provided*, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings (Amended Oct. 9, 1962, 76 Stat. 769).

* * *

Sec. 13 (15 U.S.C. 1063). Opposition to registration of marks on the principal register

Any person who believes that he would be damaged by the registration of a mark upon the principal register may, upon payment of the required fee, file a verified opposition in the Patent and Trademark Office, stating the guards therefor, within thirty days after the publication under subsection (a) of section 12 of this Act of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Commissioner for good cause. The Commissioner shall notify the applicant of each extension of the time for filing opposition. An unverified opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing to be fixed by the Commissioner. An opposition may be amended under such conditions as may be prescribed by the Commissioner (Amended Oct. 9, 1962, 76 Stat. 769; and Jan. 2, 1975, 88 Stat. 1955).

Sec. 14 (15 U.S.C. 1064). Cancellation of registrations

A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905—

(a) within five years from the date of the registration of the mark under this Act; or

(b) within five years from the date of publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsection (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used; or

(d) at any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act; or

(e) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refuses to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required (Amended Oct. 9, 1962, 76 Stat. 769).

* * *

Sec. 30 (15 U.S.C. 1112). Classification of goods and services—Registration in a plurality of classes.

The Commissioner may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant's rights. The applicant may file an application to register a mark for any or all of the goods and services upon or in connection with which he is actually using the mark: *Provided,* That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid and the Commissioner may issue a single certificate of registration for such mark (Amended Oct. 9, 1962, 76 Stat. 769).

* * *

Sec. 37 (15 U.S.C. 1119). Remedies—Power of court over registrations

In any action involving a registered mark the court may determine the right to registration, order the cancellation of registrations, in whole or in part, restore cancelled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Commissioner, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.

Sec. 38 (15 U.S.C. 1120). Remedies—Civil liability for false or fraudulent registration

Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.

Sec. 39 (15 U.S.C. 1121). Remedies—Jurisdiction of courts

The district and territorial courts of the United States shall have original jurisdiction, the circuit courts of appeal of the United States and the United States Court of Appeals for the District of Columbia shall have appellate jurisdiction of all actions arising under this Act, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

Sec. 40 (15 U.S.C.). Remedies—Review by Supreme Court

Writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this Act in the same manner as provided for in cases under the patent laws.

Sec. 41 (15 U.S.C. 1123). Commissioner to make rules for proceedings in the Patent and Trademark Office

The Commissioner shall make rules and regulations not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office under this Act.

Sec. 44(g) (15 U.S.C. 1126g). Same—Trade names or commercial names protected

Trade names or commercial names of persons described in paragraph (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

Appendice 'K'

TRADEMARK

RULES OF PRACTICE OF THE PATENT AND TRADEMARK OFFICE WITH FORMS AND STATUTES
1976

Ninth Edition
December 1976
Latest Revision, May 1979

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office/Washington, D.C.
Jones N. Kraps, Secretary/Ronald W. Esser, Commissioner

TRADEMARK RULES OF PRACTICE OF THE PATENT AND TRADEMARK OFFICE

INTRODUCTION

The following rules govern the practice and procedure in the Patent and Trademark Office with respect to applications for the registration of trademarks and other proceedings concerning trademarks.

The trademark rules are a part of the Code of Federal Regulations, which is a codification of Federal regulations under the provisions of The Federal Register Act of 1937 and The Administrative Procedure Act of 1946, and which is published under 500 titles pursuant to 44 U.S.C. 1510. Rules relating to patents, trademarks and copyrights are codified in Title 37 of the Code of Federal Regulations. The trademark rules constitute Part 2, the trademark forms Part 4, the classification of goods and services Part 6, and the patent rules Part 1 in Title 37. Title 37 of the Code of Federal Regulations is to becited thus: 37 CFR 1.1.

In creating numbers for rules, the number of the appropriate Part in Title 37 of the CFR is placed first, followed by a decimal point and then the number of the rule, so that trademark rule 2.56, for instance, is rule 56 in Part 2 of Title 37 of the Code of Federal Regulations. In the CFR itself, and in material published in the Federal Register, the rules are identified by the term "sections". Thus, section 2.56 in 37 CFR (37 CFR 2.56) is trademark rule 2.56.

The first 26 patent rules (that is, rules 1.1 to 1.26, or 37 CFR 1.1 to 1.26), which pertain to general procedures, are made applicable to trademark cases by trademark rule 2.1 except for provisions specifically directed

to patents rules 1.1 to 1.26 are placed first in the following text.

Authority: Rules in Part 2 CFR issued under sec. 41, 60 Stat. 440, sec. 1, 66 Stat. 791, sec. 1, 78 Stat. 171; 15 U.S.C. 1123, 35 U.S.C. 6, 25.

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OPPOSITION

Authority: Rules 2.101 to 2.106 interpret or apply secs. 13, 17, 60 Stat. 433, 434; 15 U.S.C. 1063, 1067.

2.101. **Filing an opposition.** (a) Any person who believes that he would be damaged by the registration of a mark upon the Principal Register may oppose the same by filing an opposition in the Patent and Trademark Office within thirty days after publication of the mark sought to be registered (rule 2.80), or within an extension of the time for filing an opposition (rule 2.102). The opposition must be verified, or include a declaration in accordance with rule 2.20, unless the opposition is filed by an attorney at law or other authorized representative in accordance with rule 2.103.

(b) An opposition must include the required fee for each class sought to be opposed in the application. If fees insufficient to cover all classes in the application are submitted, the particular class or classes in which opposition is sought should be specified. If persons are joined in an opposition, a fee for each class sought to be opposed in the application for each person so joined is required.

(c) If no fee, or a fee insufficient to cover at least one class, is filed within 30 days after publication of the mark to be opposed or within an extension of the time for filing an opposition, the opposition will not be refused if the required fee(s) and service charge (see § 2.6(g) are filed in the Patent and Trademark Office

within the time limit set forth in the notification of this defect by the Office. In situations covered by this paragraph, § 2.85(e) may not be utilized.

2.102 **Extension of time for filing opposition.** (a) A request to extend the time for filing an opposition must be made by a person who believes that he would be damaged by the registration of the mark on the Principal Register, but an attorney at law or other person authorized to represent a party may file the request on behalf of a potential opposer. The potential opposer must be identified with reasonable certainty in the request. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted, but an opposition may be accepted if the person to whom the extension was granted was misidentified through mistake, or an opposition filed in a different name may be accepted if the person filing the opposition is inprivity with the person to whom the extension was granted.

(b) A written request to extend the time for filing an opposition must be received in the Patent and Trademark Office before the expiration of thirty days from the date of publication, and should specify the period of extension desired. A first extension of time will be granted upon request if the extension is for not more than thirty days. Other extensions of time may be granted by the Commissioner for good cause.

2.103 **Opposition filed by attorney at law or other authorized representative.** An opposition may be filed in the Patent and Trademark Office by an attorney at law or other person authorized to represent a party. either within thirty days after publication of the mark sought to be registered (rule 2.80), or within an extension of the time for filing an opposition (rule 2.102). but the opposition will be null and void unless confirmed by the opposer by verification, or by declaration in ac-

cordance with rule 2.20, within thirty days after the filing of the opposition, or within such further time as may be fixed by the Commissioner upon request made before the expiration of the thirty days.

2.104 **Contents of opposition.** The opposition must set forth a short and plain statement showing how the opposer would be damaged by the registration of the opposed mark and state the grounds for opposition. A duplicate copy of the opposition including exhibits shall be filed.

2.205 **Notification of opposition proceedings.** A notification of an opposition which has been regularly filed shall be prepared, identifying the title and number of the proceeding and the application involved, and designating a time, not less than thirty days from the mailing date of such notification, within which answer must be filed. Copies of this notification shall be forwarded by the Trademark Trial and Appeal Board to the parties in care of their attorneys or other representatives, if they have attorneys or other representatives of record. The duplicate copy of the opposition and exhibits shall be forwarded with the notification to the applicant.

2.106. **Answer.** (a) If no answer is filed within the time set, the opposition may be decided as in case of default.

(b) An answer may contain any defense, and it may also contain a request for affirmative relief by way of cancellation of a registration pleaded in the opposition; but no defense attacking the validity of such registration may be otherwise raised in the proceeding. Such request for affirmative relief must be verified or include a declaration in accordance with rule 2.20 and must be accompanied by the fee as required by section 14 of the act. A reply to such request for affirma-

tive relief is required within twenty days after service thereof; but no other reply to the answer need be filed.

(c) The opposition may be withdrawn without prejudice before the answer is filed. After answer is filed the opposition may not be withdrawn without prejudice except with the consent of the applicant.

2.107. **Amendment of opposition.** An opposition may be amended in the same manner and to the same extent as a complaint in a civil action before a United States district court. See Rule 15 of the Federal Rules of Civil Procedure.

CANCELLATION

Authority: Rule 2.111 to 2.115 interpret or apply secs. 14, 17, 24, 60 Stat. 433, 434, 436; 15 U.S.C. 1064, 1067, 1092.

2.111 **Time for filing petition for cancellation.** Any person believes that he is or will be damaged by a registration may, upon payment of the required fee for each class sought to be cancelled in the registration, apply to the Commissioner to cancel said registration as to the specified class or classes. A petition to cancel which includes insufficient fees to cover all classes in the registration should specify the particular class or classes for which cancellation is sought. Such petition may be made at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the act (rule 2.153), and in cases involving the grounds specified in section 14(c), (d) and (e) of the act. In all other cases such petition must be made within five years from the date of registration of the mark under the Act of 1946 or from the date of publication under section12(c) of the act.

2.112 **Petition for cancellation.** The petition to cancel, which must be verified, or include a declaration in accordance with rule 2.20, must set forth a short and plain statement showing how the petitioner is or will be damaged by the registration, state the grounds for cancellation, and indicate the respondent party to whom notification shall be sent. A duplicate copy of the petition, including exhibits, shall be filed with the petition. Applications to cancel different registrations owned by the same party may be joined in one petition when appropriate, but the required fee must be included for each class sought to be cancelled in each registration against which each application to cancel is filed. If persons are joined in a petition to cancel, a fee for each class sought to be cancelled for each person so joined is required.

2.113 **Notification of filing of petition.** (a) When a petition for cancellation is filed, it shall be transmitted to the Trademark Trial and Appeal Board, which shall make examination thereof to determine if it is formally correct. If the petition is found to be defective as to form, the party filing the same shall be so advised and allowed a reasonable time for correcting the informality.

(b) When the petition is correct as to form, a notification shall be prepared, identifying the title and number of the proceeding and the registration involved, and designating a time, not less than thirty days from the mailing date of such notification, within which answer must be filed. A copy of this notification shall be forwarded to the petitioner in care of his attorney or other representative, if he has an attorney or other representative of record. The duplicate copy of the petition and exhibits shall be forwarded with a copy of such notification to the respondent party.

2.114 **Answer.** (a) If no answer is filed within the time set, the petition may be decided as in case of default.

(b) An answer may contain any defense, and it may also contain a request for affirmative relief by way of cancellation of a registration pleaded in the petition; but no defense attacking the validity of such registration may be otherwise raised in the proceeding. Such request for affirmative relief must be verified, or include a declaration in accordance with rule 2.20, and must be accompanied by the fee as required by section 14 of the act. A reply to such request for affirmative relief is required within twenty days after service thereof, but no other reply to the answer need be filed.

(c) The petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed the petition may not be withdrawn without prejudice except with the consent of the registrant.

2.115 **Amendment of petition for cancellation.** A petition for cancellation may be amended in the same manner and to the same extent as a complaint in a civil action before a United States district court. See Rule 15 of the Federal Rules of Civil Procedure.

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APPEALS

2.141 **Ex parte appeals from the Examiner of Trademarks.** Every applicant for the registration of a mark may, upon final refusal by the Examiner of Trademarks, appeal to the Trademark Trial and Appeal Board upon payment of the prescribed fee for each class in the application for which an appeal is taken. An appeal which includes insufficient fees to cover all classes in the application should specify the particular class or classes in which an appeal is taken. A second refusal on the same grounds may be considered as final by the applicant for purpose of appeal.

2.142. **Time and manner of ex parte appeals.** (a) Such appeal must be taken within six months from the date of final refusal or from the date of the action from which appeal is taken. Appeal is taken simply by filing a notice of appeal and payment of the appeal fee.

(b) The appellant's brief shall be filed within sixty days after the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to appellant's brief, supplying a copy to the appellant. The appellant may file a reply brief within twenty days from the date of such answer.

(c) If the appellant desires an oral hearing, he should so state by a separate notice filed not later than his brief; and due notice of the time for such hearing will be given. Oral argument will be limited to one-half hour unless otherwise permitted. If no request for oral hearing is made, the appeal will be considered on brief.

(d) Applications which have been considered and decided on appeal will not be reopened except by order of the Commissioner, and then only for consideration of matters not already adjudicated, sufficient cause being shown.

2.144 **Reconsideration of decision on ex parte appeal.** Any request for rehearsing or reconsideration, or modification of the decision, must be filed within thirty days from the date of the decision. Such time may be extended by the Trademark Trial and Appeal Board upon a showing of sufficient cause.

2.145 **Appeal to court and civil action.** (a) *Appeal to U.S. Court of Customs and Patent Appeals.* As applicant for registration, or any party to an interfer-

ence, opposition, or cancellation proceeding or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board and any registrant who has filed an affidavit or declaration under Section 8 of the act or who has filed an application for renewal and is dissatisfied with the decision of the Commissioner (rules 2.165, 2.184), may appeal to the U.S. Court of Customs and Patent Appeals. The appellant must take the following steps in such an appeal: (1) In the Patent and Trademark Office give written notice of appeal to the Commissioner (see paragraphs (b) and (d) of this rule); (2) in the court, file a petition of appeal and a certified transcript of the record within a specified time after filing the appeal, and pay the fees for appeal, as provided by the rules of the Court. The transcript will be transmitted to the Court by the Patent and Trademark Office on order of and at the expense of the appellant. Such order should be filed within the notice of appeal, but in no case should it be filed later than fifteen days thereafter.

(b) *Notice of appeal.*

(1) When an appeal is taken to the U.S. Court of Customs and Patent Appeals, the appellant shall give notice thereof in writing to the Commissioner, which notice shall be filed in the Patent and Trademark Office within the time specified in paragraph (d) of this rule. The notice shall specify the party or parties taking the appeal and shall designate the decision or part thereof appealed from.

(2) In inter parties proceedings, the notice must be served as provided in rule 2.119.

(c) *Civil Action.* (1) Any person who may appeal to the U.S. Court of Customs and Patent Appeals (paragraph (a) of this rule), may have remedy by civil

action under section 21(b) of the act. Such civil action must be commenced within the time specified in paragraph (d) of this rule.

(2) If an applicant or registrant in an ex parte case has taken an appeal to the U.S. Court of Customs and Patent Appeals, he thereby waives his right to proceed under section 21(b) of the act.

(3) If a party to an inter partes proceeding has taken an appeal the U.S. Court of Customs and Patent Appeals, and any adverse party to the case shall within 20 days after the appellant shal have filed notice of appeal to the court (paragraph (b) of this rule), file notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) of the act, certified copies of such notices will be transmitted to the U.S. Court of Customs and Patent Appeals for such action as may be necessary. The notice of election must be served as provided in rule 2.119.

(d) *Time for appeal or civil action.*

(1) The time for filing the notice of appeal to the U.S. Court of Customs and Patent Appeals (paragraph (b) of this rule), or for commencing a civil action (paragraph (c) of this rule), is sixty days from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, as the case may be. If a request for rehearsing or reconsideration, or modification of the decision, is filed within the time specified in rule 2.129(c) or 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire at the end of the sixty day period or thirty days after action on the request, whichever is later. The sixty and thirty day periods may be extended by the Commissioner upon a showing of sufficient cause.

(2) The times specified herein are calendar days. If the last day of time specified for appeal, or com-

mencing a civil action falls on a Saturday, Sunday or legal holiday, the time is extended to the next day which is neither a Saturday, Sunday nor a holiday.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Customs and Patent Appeals and an adverse party has filed notice under section 21(a) (1) of the act that he elects to have all further proceedings conducted under section 21(b) of the act, the time of filing a civil action thereafter is specified in section 21(a) (1) of the act.

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2.148 **Commissioner may suspend certain rules.** In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules not being a requirement of the statute may be suspend or waived by the Commissioner.

CERTIFICATE

2.151. **Certificate.** When the requirements of the law and of the rules have been complied with, and the Patent and Trademark Office has adjudged a mark registrable, a certificate will be issued to the effect that the applicant has complied with the law and that he is entitled to registration of his mark on the Principal Register or on the Supplemental Register, as the case may be. The certificate will state the date on which the application for registration was filed in the Patent and Trademark Office, the act under which the mark is registered, the date of issue and the number of the certificate. Attached to the certificate and forming a part thereof will be a reproduction of the mark and pertinent date from the application. A notice of the affidavit or declaration requirements of section 8(a) of the act (rule .16) will be printed on the certificate.

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AMENDMENT OF RULES

2.189 **Amendments to rules.** (a) All amendments to the rules will be published in the *Official Gazette* and in the FEDERAL REGISTER.

(b) Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules will be published in the FEDERAL REGISTER and in the *Official Gazette*. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof. Oral hearings may be held at the discretion of the Commissioner.

FORMS FOR TRADEMARK CASES

The following forms illustrate the manner of preparing applications for registration of marks as well as various other papers to be filed in the Patent and Trademark Office in trademark cases. Applicants and other parties will find their business facilitated by following them. These forms should be used in cases to which they are applicable. A sufficient number of representative forms are given which, with the variations indicated by the notes, should take care of all the usual situations. In special situations such alterations as the circumstances render necessary may be made provided they do not depart from the requirements of the rules or of the trademark statute. Before using any forms, the pertinent requirements of the rules and the pertinent sections of the trademark statute should be studied carefully.

In using these forms, the applicant or other party filing the form may, instead of making oath or verification where such is prescribed in the forms, set forth a written declaration that all statements made of his own

knowledge are true and that all statements made on information and belief are believed to be true, but this may be done only if declarant is warned by wording in the same paper that willful false statements and the like are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or other document or any registration resulting from the application: See form 4.1a.

4.1 Trademark application by an individual: Principal Register with oath.
4.1a Trademark application by an individual: Principal Register with declaration.
4.2 Power of attorney at law (which may accompany application).
4.4 Designation of domestic representative to accompany application.
4.5 Trademark application by a firm; Principal Register.
4.6 Trademark application by a corporation; Principal Register.
4.7 Service mark application; Principal Register.
4.8 Collective mark application (including collective membership mark); Principal Register.
4.9 Certification mark application; Principal Register.
4.10 Application based on concurrent use; Principal Register.
4.11 Application to register on Supplemental Register.
4.13 Application for renewal.
4.14 Affidavit for publication under section 12(c).
4.15 Affidavit required by section 8.
4.16 Affidavit under section 15.
4.16 (Combined 8 & 15) Combined affidavit under sections 8 and 15.
4.17 Opposition in the United States Patent and Trademark Office.
4.18 Petition to cancel a registration in the United States Patent and Trademark Office.

4.19 Ex parte appeal from Examiner of Trademarks in the United States Patent and Trademark Office.

4.21 Assignment of application.

4.22 Assignment of registration.

4.23 A suggested format for the certificate of mailing under 37 CFR 1.8(a) to be included with the correspondence.

Authority: Rules 4.1 to 4.23 issued under sec. 41, 60 Stat. 440; 1; U.S.C. 1123. Interpret or apply sec. 1, 60 Stat. 427; 15 U.S.C. 1051.

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4.17 *Opposition in the United States Patent and Trademark Office.*

In the matter of application Serial No. .....
Published in the *Official Gazette* on .....
(Date)

.....
(Name of opposer)

v.

.....
(Name of applicant)

Opposition No. .....
(To be inserted by Patent and Trademark Office)

.....
(Name of opposer)

a(n) (1) .....
(Legal entity of opposer)

located and doing business at .....
(Address)

believes that it/he/she will be damaged by registration of the mark shown in the above identified application, and hereby opposes the same.

As grounds of opposition, it is alleged that:

(Numbered paragraphs should state the grounds and recite facts tending to show why opposer believes opposer will be damaged.)

(2)
State of .....
Country of .....

ss.

.....

(Name of opposer or of person authorized to sign for a juristic opposer)

states that he/she is the opposer named in this opposition, or is the person authorized to sign for the juristic opposer named in this opposition; that he/she has read the opposition and knows the contents thereof; and that the allegations are true, except as to the matters stated therein to be upon information and belief, and as to those matters he/she believes them to be true.

.....

(Signature of opposer, if opposer is a corporation or other juristic organization, give the official title of the person who signs for opposer.)

Appendice I.

PERTINENT PARTS OF THE CONSTITUTION

ARTICLE II—THE PRESIDENT

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of Four Years, and together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust of Profit under the United States, shall be appointed an Elector.

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The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen or a Citizen of the United States, at the time of the Adoption of this Constitution shall be eligible to the Office of President neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice

President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed or a President shall be elected.

The President shall, at stated times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation. — "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the States of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

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ARTICLE III—THE JUDICIARY

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Seftion 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made,

or which shall be made under their Authority;-to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Section 1. Judicial Power, Tenure and Compensation

Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

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AMENDMENTS TO THE CONSTITUTION

AMENDMENT I—FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL ASSEMBLAGE; PETITION OF GRIEVANCES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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AMENDMENTS V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be de-

prived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave: but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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Section 1. Equal protection of the laws
* * * nor deny to any person within its jurisdiction the equal protection of the laws.

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QUOTATIONS FROM APPLICABLE LAW

18 U.S.C. § 241. Conspiracy Against Rights of Citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

* * * * *

18 U.S.C. § 1001. Statements or Entries Generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

June 25, 1948, c. 645, 62 Stat. 749.

* * * * *

28 U.S.C. § 211. Appointment and Number of Judges

The President shall appoint, by and with the advice and consent of the Senate, a chief judge and four associate judges who shall constitute a court of record known as the United States Court of Customs and Patent Appeals. Such court is hereby declared to be a court established under article III of the Constitution of the United States. June 25, 1948, c. 646, Stat. 899; Aug. 25, 1958, Pub.L. 85-755, § 1, 72 Stat. 848.

* * * * *

28 U.S.C. § 1253. Direct Appeals from Decisions of Three-Judge Courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 928.

* * * * *

28 U.S.C. § 1254. Courts of Appeals; Certiorari; Appeal; Certified Questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

* * * * *

28 U.S.C. § 1256. Court of Customs and Patent Appeals Certiorari

Cases in the Court of Customs and Patent Appeals may be reviewed by the Supreme Court by writ of certiorari. June 25, 1948, c. 646, 62 Stat. 928.

* * * * *

28 U.S.C. § 1291. Final Decision of District Courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the Disrict of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 343.

* * * * *

28 U.S.C. § 1292. Interlocutory Decisions

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

* * * * *

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed;

* * * * *

28. U.S.C. § 1338. Patents, Plant Variety Protection, Copyrights, Trademarks, and Unfair Competition

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trade-mark laws.

June 25, 1948, c. 646, 62 Stat. 931; Dec. 24, 1970, Pub.L. 91-577, Title III, § 143(b), 84 Stat. 1559.

* * * * *

28 U.S.C. § 1343. Civil Rights and Elective Franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which heh ad knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or us-

age, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub.L. 85-315, Part III, § 121, 71 Stat. 637.

* * * * *

28 U.S.C. § 1542. Patent Office Decisions

The Court of Customs and Patent Appeals shall have jurisdiction of appeals from decisions of:

(1) the Board of Appeals and the Board of Interference Examiners of the Patent Office as to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and such appeal by an applicant shall waive his right to proceed under section 63 of Title 36; and

(2) the Commissioner of Patents as to trademark applications and proceedings as provided in section 1071 of title 15.

June 25, 1948, c. 646, 62 Stat. 942; May 24, 1949, c. 139, § 89(b), 63 Stat. 102.

* * * * *

28 U.S.C. § 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or ap-

propriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. June 25, 1948, c. 646, 62 Stat. 944; May 24, 1949, c. 139, § 90, 63 Stat. 102.

* * * * *

28 U.S.C. § 2072. Rules of Civil Procedure for District Courts

The Supreme Court shall have the power to prescribe, by general rules, the form of process, writs pleadings, and motions, and the practice and procedure of the district courts of the United States in civil actions.

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve he right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.

* * * * *

28 U.S.C. § 2101. Supreme Court; Time for Appeal or Certiorari; Docketing; Stay

* * * * *

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

* * * * *

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

* * * * *

28 U.S.C. § 2103. Appeal from State Court Improvidently taken regarded as Writ of Certiorari

.. If an appeal to the Supreme Court is improvidently taken from the decision of the highest court of a State in a case where the proper mode of a review is by petition for certiorari, this alone shall not be ground for dismissal; but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken. Where in such a case there appears to be no reasonable ground for granting a petition for writ of certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs. June 25, 1948, c. 646, 62 Stat. 962.

* * * * *

28. U.S.C. § 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances, June 25, 1948, c. 646, 62 Stat. 963.

* * * * *

CHAPTER 151 — DECLARATORY JUDGMENTS

28 U.S.C. § 2201. Creation of Remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7, 1958; Pub.L. 85-508; § 12(p), 72 Stat. 349.

* * * * *

35 U.S.C. § 1. Establishment

The Patent Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law. July 19, 1952, c. 950, § 1, 66 Stat. 792.

* * * * *

35 U.S.C. § 3. Officers and Employees

A Commissioner of Patents, one first assistant commissioner, two assistant commissioners, and nine examiners-in-chief, shall be appointed by the President, by and with the advice and consent of the Senate. The assistant commissioners shall perform the duties pertaining to the office of commissioner assigned to them by the Commissioner. The first assistant commissioner, or, in the event of a vacancy in that office, the assistant

commissioner senior in date of appointment, shall fill the office of Commissioner during a vacancy in that office until a Commissioner is appointed and takes office. The Secretary of Commerce, upon the nomination of the Commissioner in accordance with law, shall appoint all other officers and employees.

The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee. July 19, 1952, c. 950, § 1, 66 Stat. 792.

* * * * *

35 U.S.C. § 6. Duties of Commissioner

The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trade-marks; and he shall have charge of property belonging to the Patent Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office. July 19, 1952, c. 950, § 1, 66 Stat. 793.

* * * * *

35 U.S.C. § 142. Notice of Appeal

When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner and shall file in the Patent Office his reason of appeal specifically set forth in writing, within such time after the date of the decision appealed from not less than sixty days, as the Commissioner appoints. July 19, 1952, c. 950, § 1, 66 Stat. 806.

* * * * *.

42 U.S.C. § 1981. Equal Rights Under the Law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R. S. § 1977.

* * * * *

42 U.S.C. § 1983. Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

RULES OF CIVIL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS

WITH FORMS

AUGUST 1, 1980

Printed for the use
of

THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1980

Rule 8. General Rules of Pleading

* * * * *

(c) AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) EFFECT OF FAILURE TO DENY. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

* * * * *

Rule 13. Counterclaim and Cross-claim.

(a) COMPULSORY COUNTERCLAIMS. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2)

the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) PREMISSIVE COUNTERCLAIMS. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

* * * * *

Rule 28. Persons before whom depositions may be taken.

* * * * *

(c) DISQUALIFICATION FOR INTEREST. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.
(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 29, 1980, eff. Aug. 1, 1980.)

* * * * *

Rule 55. Default

(a) ENTRY. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1) *By the Clerk.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that

amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) *By the Court.* In all other cases the party entitled to a judgment of default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

* * * * *

Rule 56. Summary Judgment.

(b) FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

FEDERAL RULES
OF
APPELLATE PROCEDURE

WITH FORMS

AUGUST 1, 1983

Printed for the use
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TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

Rule 3. Appeal as of right—How taken

(a) *Filing the notice of appeal.*—An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by permission under 28 U.S.C. § 1292(b) and appeals by allowance in bankruptcy shall be taken in the manner prescribed by Rule 5 and Rule 6 respectively.

* * * * *

(c) *Content of the notice of appeal.*—The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. From 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

* * * * *

Rule 4. Appeal as of right—When taken.

(a) *Appeals in civil cases.*—(1) In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party

within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

(2) Except as provided in (a)(4) of this Rule 4, a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

* * * * *

TITLE V. EXTRAORDINARY WRITS

Rule 21. Writs of mandamus and prohibition directed to a Judge or Judges and other Extraordinary Writs

(a) *Mandamus or prohibition to a judge or judges; petition for writ; service and filing.*—Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk of the court of appeals with proof of service on the respondent judge or judges and on all parties to the action in the trial court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) *Denial; order directing answer.*—If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an

answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges named respondents and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the judge or judges named respondents do not desire to appear in the proceeding they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases.

.... * * * * * ....

APPENDIX OF FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court.

United States District Court for the .....
District of .....
File Number .....

A. B., Plaintiff
v.
C. D., Defendant

Notice of Appeal

Notice is hereby given that C. D., defendant above named, hereby appeals to the United States Court of Appeals for the ..... Circuit (from the final judgment) (from the order describing it) entered in this action on the .... day of ....., 19.....

(s) .....
.....
(*Address*)
Attorney for C. D.

Form 3. Petition for Review of Order of an Agency. Board, Commission or Officer

United States Court of Appeals for the ..... Circuit

A. B., Petitioner
v.
XYZ Commission, Respondent

Petition for Review

A. B. hereby petitions the court for review of the Order of the XYZ Commission (describe the order) entered on ....., 19.....

.....
Attorney for Petitioner
Address: .....

Appendice 'M'

Appendice 'M' is the Certified List. It cannot be printed because it is in Manuscript and some of the writing is illegible. A copy is made an Appendice of Petitoner Robert Zlomke in his Typewritten Petition, and thus it is an appendice in this Printed Petition by reference thereto, as well as to the copies furnished the CAFC, the Flying Tiger Line Inc. and its counsel. The Certified List was created by the PTO/TTAB and therefore it has a copy of its own document, to which reference, is also made.

Appendice 'N'

PERTINENT CITATIONS

There is no due process of law as required by the Constitution where bias or partiality exists in a Government Agency acting as a judge:

1. "Due process in an administrative hearing includes a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law, and administrative convenience or necessity cannot override this requirement." Russell-Newman Mfg. Co. v. N.L.R.B. C.A. Tex; 1966 370 F. 2d 980; also Swift & Co. v. U.S. C.A. 7, 1962, 308 F. 2d 849; also Amos Treat & Co. v. Securities and Exchange Commission, 1962, 306 F. 2d 260, 113 U.S. App. D.C. 100; and Shacthtman v. Dulles, 1955, 225 F. 2d 938, 96 U.S. App. D.C. 287; Southern Stevedoring Co. v. Voris, C.A. Tex. 1941, 190 F. 2d 275.

2. "Suppression of any part of record by administrative agency is in derogation of procedural due process unless based upon executive privilege or national security." Lechrich v. D.C.N.J. 1965, 246 F. Supp. 675.

3. Impartiality in an Administrative agency is a condition precedent to procedural due process, N.L.R.B. v. Tamper, Inc. C.A. 4, 1975, 522 F.2d 781; Duffield v. Charleston Area Medical Center, Inc. C.A. W. Va 1974, 503 F. 2d 512; and Wasson V. Trowbridge C.A. N.Y. 1967, 382 F. 2d 807, on remand 285 F. Supp. 936; and N.L.R.B. v. National Paper Co. C.A. 5, 1954, 216 F. 2d 859.

4. "Efficient administration of social security legislation requires well-defined procedures which must be adhered to by all parties concerned, but the courts must not relinquish their duty to maintain the proper bounds of administrative discretion and to protect rights of individual claimants." Burge v. Richardson, D. C. Ga. 1971, 321 F. Supp. 646.

5. "District court has duty to stand watchdog for any procedural due process deficiencies on part of administrative agency adversely affecting any party." Pre-Fab Transit Co. v. U.S.D.C. III, 1969, 306 F. Supp. 1247, affirmed 90 S.Ct. 815, 397 U.S. 40, 25 L. Ed. 2d 41

6. "Courts have a duty to maintain minimum standard in executive department to assure that wishes of Congress are not frustrated." DeVito v. Shultz, D.C. D.C. 1969 300 F. Supp. 381.

7. "Court has right and duty upon proper application, to judicially review action of any agency." Word V. U.S., D.C. Ala. 1963, 223 F. Supp. 614.

8. "Function of judicial review of agency action is to determine authority of agency, compliance by agency with necessary procedural requirements, and any claim that agency action is arbitrary, capricious, or abuse of discretion" E.I. du Pont de Nemours & Co. v. Train, C. A. 4, 1976, 541 F. 2d 1018.

9. "Courts must reject an agency construction of a statute when that construction is obviously

wrong." R. V. McGinnis Theaers & Pay T.V. Inc. v. Video Independent Theatres, Inc. C.A. Okl. 1967, 386 F. 2d 592, certiorari denied 88 S.Ct. 1265, 390 U.S. 1014, 20 L. Ed. 2d 163.

10. "Reviewing court can set aside agency action which is arbitrary, capricious, abuse of discretion or otherwise not in accordance with law." E. I. Du Pont de Nemours & Co. v. Train, C.A. 4, 1976, 541 F. 2d 1018.

11. "Even under "arbitrary, capricous" standard, agency action will not be upheld where inadequacy of explanation frustrates review." National Nutritional Foods Ass'n. V. Weinberger, C.A. N.Y. 1975, 612 F. 2d 688, certiorari denied 96 S.Ct. 44, 423, U.S. 827, 46 L.Ed. 2d 44, on remand 418 F. Supp. 394.

12. "To the extent necessary to decision and when presented, the review court shall . . . (2) hold unlawful and set aside agency action, findings and conclusions found to be — (A) arbitrary, capricious or abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706 (1976).

13. "The Cohen rule permits appeals from conclusive orders touching matters that are collateral to the merits of the suit when failure to allow appeal could result in irreparable injury an erroneous ruling. . . The death knell doctrine enunciated in Eisen I is distinct from the collateral order rule of Cohen. . . the collateral order rule allows appellate consideration of orders that are clearly interlocutory. . . See Redish. The Pragmatic Approach to Appealability in the Federal Courts, 75 Colum. L. Rev. 89, 94 (1975)" Annual Survey of Am. Law, 1979 New York University Law School. See Cohen v. Beneficial Indus. Loan Corp. 337 U.S. 541

(1949), and Share v. Air Properties G. Inc., 538 F. 2d 279, 284 (9th Cir.) cert. denied, 489 U.S. 923 (1976).

14. 28 U.S.C. § 1292(b) (1976) of the Judicial Code permits appeals from interlocutory district court orders. The Supreme Court declared: "is keyed to the 'need to permit litigants to effectually challenge interlocutory orders of serious, perhaps irreparable consequence.'" See 437 U.S. at 480 (quoting Baltimore Contractors, Inc. v. Bodinger, 348 U.S. 176, 189 (1955).

15. "A panel of the Second Circuit held that because section 1292(a) (1) permits appellate review of the order denying a preliminary injunction, the court in its discretion could exercise pendent jurisdiction over the order denying class status. The court deemed proper the exercise of pendent jurisdiction because the district court's denial of class status had been influenced by the same factors that prompted its denial of preliminary relief. . . . Annual Survey of Am. Law 1979 595 F.2d 1231 (2d Cir.), vacated and remanded on other grounds sub nom. Lambard v. Maccera, 99 S.Ct. 2833 (1979) at 1236 n.8; Jenkins v. Blue Cross Mut. Hosp. Ins. Inc. 522 F.2d 1235 1237-38 (7th Cir. 1975); aff'd en banc, 538 F.2d 164 (7th Cir.), cert. denied, 429 U.S. 986 (1976) (jurisdiction exercised when class action determination "directly controlled" denial of preliminary relief)."

16. Under rule 54 of the Federal Rules of Civil Procedure, a district judge may enter an appealable order as to one or more issues providing there is no just reason for delay. Windham v. American Brands, Inc. 539 F.2d 1016, 1020 (4th Cir.) 1976) rev'd on other grounds, 565 F.2d 59 (4th Cir.) (1977) (en banc), cert. denied, 435 U.S. 968 (1978).

17. In Monroe v. Pape which holds that exhaustion of state judicial remedies is not a condition precedent to a request for federal relief under section 1983, 365 U.S. 167 (1961). Exhaustion of state judicial remedies before taking federal action is equivalent to exhaustion of trial court remedies before appeal. If one is not essential, neither should be the other.

18. "Where certain questions as to right of an applicant to registration of its mark were not raised either in notice of opposition or in reasons of appeal to United States Court of Customs and Patent Appeals, such questions would not be considered by such Court. Societe Anonyme Marne Et Champagne v. Myers, 1957, 250 F.2d 374, 45 C.C.P.A. Patents 755." U.S. Code, Annotated.

19. "Opposer of registration of trademark could not raise issues whether mark was geographically descriptive, was not used as a trademark, and was not used in interstate commerce, on appeal to Court of Customs and Patent Appeals, where opposer failed to include such issues as grounds for opposition proceedings in original notice of opposition, and there was no amendment in record which included such issues. Robert Hall Clothes, Inc. v. Studds, Cust & Pat. App. 1961, 286 F. 2d 615." U.S.C. Annotated.

20. "On appeal from decision of United States Commissioner of Patents affirming decision of Examiner of Interferences dismissing opposition to registration of trade-mark, Court of Customs and Patent Appeals would not consider contention that testimony showed nonuse of mark by applicant, where such matter was not pleaded in notice of opposition. Miles Laboratories v. Pepsodent Co., 1939, 104 F.2d 205, 26 C.C.P.A. Patents 1272." United States Code Annotated.

21. "Where Commissioner of Patents sustained opposition and denied registration of trade-mark, district court had jurisdiction to entertain action against Commissioner alone to compel registration of the trade-mark. Speed Products Co. v. Tinnerman Products, C.A.D.C. 1948, 171 F.2d 727." U. S. Code Annotated.

22. "Where notice of appeal to Court of Customs and Patent Appeals from order cancelling trademark was given to Commissioner of Patents with statement of reasons of appeal, subject matter passed from jurisdiction of patent office to such court. Myers v. Polk Miller Products Corp., 1953, 201 F.2d 373, 40 C.C.P.A. Patents 739." U. States Code Annotated.

23. "In suit for adjudication that trademark was entitled to registration and for declaratory judgment 'invalidating defendant's registered trade-mark, allegation of infringement in defendant's counterclaim established existence of "actual controversy" and court had jurisdiction over action for declaratory judgment. Miles Shoes, Inc. v. R. H. Macy & Co., D.C.N.Y. 1951, 102 F. Supp. 977, reversed on other grounds 199 F.2d 602, certiorari denied 73 S.Ct. 650, 345 U.S. 909, 97 L.Ed. 1345." United States Code Annotated.

24. "If on an appeal from a decision cancelling a registered trade-mark, it appears that the application was sufficient in form to warrant registration either as a technical trademark or under the 10 years' clause of former section 85 of this title and there was no express finding by the Commissioner on the subject, the applicant will be entitled to prevail if he can show that he is entitled to registration on either ground, McIlhenny v. New Iberia Extract of Tobacco Pepper Co., 1910, 34 App. D.C. 430." United States Cole Annotated.

25. "The death knell doctrine, originating with the Second Circuit in Eisen v. Carlisle & Jacquelin (Eisen I), provides for appellate review of district court orders that are not technically final but that have the practical effect of ending a lawsuit." 370 F. 2d 119, 12021 (2d Cir. 1966), cert. denied, 386 U.S. 1035 (1967)." Annual Survey of American Law 1979, New York University Law School.

26. "In support of the Court's view, Justice Rehnquist posited that if courts were permitted to impose their own notions of the procedures required to obtain the "best" or "correct" rule, judicial review would become "totally unpredictable. . . . . This argument fails to take into account the power of reviewing courts to set aside agency action for abuse of discretion and agency rules that are unsupported by substantial evidence. It is inconsequential whether a court invalidates a rule on the ground that it is arbitrary and capricious or that the procedures utilized did not develop substantial evidence to support it, or instead prescribes ad hoc procedural requirements in addition to those of section 553. The result in either case is the same: the agency engaged in rule making under section 553 cannot always be certain that mere notice and comment procedures will suffice. Cases are likely to arise in which, in order to show that a *rule* is supported by substantial evidence, the agency will have to provide some form of adjudicatory procedures to allow interested parties to present evidence and attack evidence introduced by others. . . The Adequacy of the record in *informal rulemaking* turns solely upon whether the notice and comment requirements of section 553 and the relevant regulatory statutes are met." See Verkuil, Judicial Review of Informal Rulemaking, 60 Va. L. Rev. 185, 187 (1974) See Friendly, supra note 243, at 1314; of Wright, See also Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory Com-

m'n. 547 F. 2d 633, 657 (D.C. Cir. 1976) (separate statement of Chief Judge Bazelon), rev'd sub nom. Vermont Yankee Nuclear Power Corp. V. Natural Resources Def. Council, Inc. 435 U.S. 519 (1978). Vermont Yankee Court relied upon FCC v. Schreiber, 381 U.S. 279 (1965), which held that a court may not devise procedures on the basis of its own conception of how the public and private interests can best be served, the Court there went on to consider whether the procedures in question were arbitrary and unreasonable. 1979 Annual Survey of American Law.

27. "Due Process Right to a Meaningful Opportunity to Participate. The Supreme Court concluded that the notice and comment procedures utilized in Vermont Yankee satisfied due process because the case involved the promulgation of a legislative-type rule of future, general applicability. The Court explicitly distinguished this situation from that in which an agency promulgates an adjudicative-type rule that primarily affects only a few individuals. In the latter situation, the court suggested that "additional procedures may be required to afford the aggrieved individuals due process." 435 U.S. at 542 (quoting Florida East Coast Ry. 410 U.S. at 242, 245 (quoting Hi-Metalic Inv. Co., 239 U.S. at 441, 446)). This indicates that the PTO has no legal or Constitutional right to arbitrarily extend the 30-day period for filing Oppositions to 44 days; and certainly not without notifying those persons who would be effected and injured thereby and giving them an opportunity to comment. This also indicates that the courts cannot make arbitrary rules such as 'page limitations' on briefs without 'notice and comment' procedures, and publication of 'intentions to make rule' in the Federal Register and Official Gazette and that any such rule that precludes the submission of all the issues and space to present argument thereon is patently unconsti-

tutional and null and void. In this instance the Rule limiting Briefs to 50 pages conflicts with another Rule requiring the inclusion of 'Argument' in a Brief, without which it would lose significant meaning and consequence, thus the Rule is an attack on other more substantial Rules.

28. "Several lower courts had required or suggested procedures beyond mere notice and comment in information rulemaking, basing their decisions on the premise that the guarantee of a meaningful opportunity to be heard, as a matter of fairness, is equally applicable in the context of agency rulemaking. 435 U.S. at 542 N.L.; SEE United States v. Florida East Coast Ry., 410 U.S. at 244-45; Bowles v. Willingham, 321 U.S. 603 (1944); Bi-Metallic Inv. Co. v. State Bd. of Equalizaion, 239 U.S. 441 (1915)." 1979 Annual Survey of American Law.

29. ". . . Although conceding that the fourth amendment did not "in so many words" provide for its enforcement by an action for damages, the Court (Supreme Court) held that when federally protected rights have been invaded, federal courts may provide whatever relief is appropriate. (quoting Bell v. Hood, 327 U.S. 678, 684 (1946)). 403 U.S. 388 (1971). 1979 Annual Review of American Law.

30. ". . . The Supreme Court has acknowledged, however, that whether a decision is final "is frequently so close a question that decision of that issue either way can be supported with equally forceful arguments." As a consequence, the requirement of finality is to be given a "practical rather than a technical construction." In construing the requirement practically, a number of courts concluded that an order denying certificaton of a class, while not technically final, had the effect of sounding the "death knell" of the litigation and thus was appealable. Gillespie v. United States Steel

Corp., 379 U.S. 148, 152 (1964); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949); Ott v. Speedwriting Publishing Co. 518 F.2d 1143 (6th Cir. 1975); Hartmann v. Scott, 488 F.2d 1215 (8th Cir. 1973)." 1979 Annual Survey of American Law.

31. "The Rules Enabling Act, 28 U.S.C. § 2072 (1976), provides that the Federal Rules of Civil Procedure "shall not abridge, enlarge or modify any substantive right." See Handler, Twenty-Fourth Annual Antitrust Review, 72 Colum. 5. Rev. 1, 37 (1972)." 1979 Annual Review of American Law.

32. "§ 2071. Rule-making power generally. The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court. June 25, 1948, c. 646, 62 Stat. 961; May 24, 1949, c. 139, § 102, 63 Stat. 1004." United States Code Annotated 28 § 2071.

33. "The Federal courts have authority to establish all necessary rules for the orderly conduct of business, provided the rules are not repugnant to the laws of the United States. Hecker v. Fowler, N.Y. 1865, 2 Wall. 123, 17 L.Ed. 759." United States Code Annotated.

34. "The function of court rules, which embraces the regulation of forms, operation and effect of process, and the prescribing of forms, modes and times for proceedings, is to regulate the practice of the court and to facilitate the transaction of its business and not to enlarge or restrict jurisdiction nor to abrogate or modify substantive law. Washington-Southern Nev. Co. v. Baltimore & Philadelphia Steamboat Co. Pa. 1924, 44 S.Ct. 220, 263 U.S. 629, 68 L.Ed. 480." United States Code Annotated.

35. "Substantive rights to equitable relief under state law cannot be abridged or enlarged by *rule*. Guaranty Trust Co. of N.Y. v. York, N. Y. 1945, 65 S.Ct. 1464, 326 U.S. 99, 89 L. Ed. 2079, 160 A. L. R. 1231, rehearing denied 66 S.Ct. 7, 326 U.S. 806, 90 L.Ed. 491." United States Code Annotated.

36. "Rules of practice adopted by the district court do not control its discretion so as to deprive it of power to secure the trial of causes on their merits, on proper showing. Mutual Building Fund Soc. & Dollar Sav. Bank v. Bossleux, D.C. Va. 1877, Fed. Cas No. 9, 977." United States Code Annotated.

37. "District Court rules may not enlarge or restrict jurisdiction or abrogate or modify substantive law. Clymer v. U.S., C.C.A. Colo, 1930, 38 F.2d 581. See also, American Brake Shoe and Foundry Co., D.C.N.Y., 1932, 1 F. Supp. 820. U.S. Code Annotated.

38. "Court of Claims recognizes and enforces the general and substantial rules of judicial procedure recognized by *common law* courts. Peterson v. U.S. 1890, 26 Ct. Cl. 93." U.S. Code Annotated.

39. "The Court of Claims may use such machinery as courts of more general jurisdiction employ under circumstances to aid in their investigation. Intermingled Cotton Cases, Ct. Cl. 1876, 92 U.S. 651, 23 L.Ed. 756." United States Code Annotated.

40. "This section empowering courts to prescribe rules for conduct of business confers upon Court of Claims a rule-making power as broad as power of Supreme Court under section 2072 of this title to promulgate Federal Rules of Civil Procedure for district courts, subject only to additional limitations on rule-making power of Court of Claims that its rules should be consistent with acts of Congress

and rules prescribed by Supreme Court. Kamen Soap Products Co. v. U.S. 1953, 110 F. Supp. 430, 124 Ct. Cl. 519. United States Code Annotated.

41. "To the extent that substantial portions of rules of Court of Claims have been derived from Federal Rules of Civil Procedure for United States District Courts, the practice and interpretation of the federal rules in the district courts may be considered by Court of Claims in application of its own rules, together with its own experience and the special circumstances adhering to the Court of Claims. Lowe v. U.S. 1952, 104 F. Supp. 102, 122 Ct. Cl. 144." United States Code Annotated.

42. "The Supreme Court has power to prescribe the practice and procedure of district courts in civil actions, so long as these rules do not abridge, enlarge, or modify any substantive right. Crescent Wharf & Warehouse C. V. Pillsbury, C.A. Cal. 1958, 259 F.2d 850." 28 U.S.C. Annotated. The right to list and obligation to list Issues and Questions and right/obligation to present ARGUMENT in Brief on Appeal is a substantive right, without which the Appeal is nullified thus defeating appeal by indirect action precluding access to the court, and evading fundamental statutory and constitutional duty of the court.

43. "The United States Supreme Court may not, by adoption of Federal Rules of Civil Procedure, 28 U.S.C.A. alter the jurisdiction of federal District Courts or of the Court of Appeals. Bendix Aviation Corp. v. Glass, C.A.Pa. 1952, 105 F.2d 267, 38 A.L.R.2d 356" 28 U.S. Code Annotated. Limiting a Brief so much that a given case cannot be pleaded meaningfully and properly is an abridgement of jurisdiction by prejudicing or impossibilizing it.

44. "The rules established or altered by the Supreme Court are not rules of decision, but are merely rules of practice, prospective in their operation. The Selt, D.C. Wis. 1872, 3 Biss, 344, 21 Fed. Cas No. 12, 649. See, also, Barron v. Locke, D.C. 1850, 2 Fed. Cas. No. 1,054." 28 U.S.C. Annotated. Limiting the pages of a Brief so as to eliminate 'ARGUMENT' in effect makes 'RULE' a rule of decision.

45. "Federal Rules of Civil Procedure govern procedure only and not the substantive rights of parties who invoke the jurisdiction of federal courts. Fontenot v. Rosch. D.C. Tenn. 1954, 120 F. Supp. 788." 28 U.S.C. Annotated. The right to present argument on an appeal is a substantive right, as well as an obligation on Brief, but if complications and size of a given case require the utilization of the 'allowed pages' for other required parts and leaves no space-pages for 'ARGUMENT' then the arbitrary rule on 'size of Brief' must fall in the face of a substantive right as well as procedural rule for presentation of 'ARGUMENT' in appeal.

46. "OPPOSITION TO REGISTRATION . . . Time to file . . . Former section 86 of this title providing that person who believes he would be damaged by registration of trademark may oppose registration by filing notice of opposition stating grounds therefor in Patent Office within 30 days after publication of mark *precludes any amendment setting up new grounds of opposition if filed more than* 30 *days after publication of mark sought to be registered.* Scholl Mfg. Co. v. Simon, 1949, 173 F. 2d 245, 36 C.C.P.A. Patents 939." 15 U.S. Code § 1063 Annotated.

47. "OPPOSITION TO REGISTRATION . . . Time to file . . . *CONGRESS HAVING SPECIFICALLY PROVIDED FOR TIME WITHIN WHICH AN OP-*

POSITION TO GRANTING OF REGISTRATION MAY BE FILED, IT WOULD NOT BE PROPER TO CONSTRUE PATENT OFFICE RULE TO PERMIT, IN EFFECT, COMMENCEMENT OF OPPOSITION AT LATER TIME. Wilson v. Delaunay, 1957, 245 F.2d 877, 44 C.C.P.A. Patents 1019." 15 U.S. Code § 1063 Annotated.

48. "Where an opposition is not properly verified by the person filing it, and an instrument which is practically a new opposition, properly verified, is filed after the expiration of such period, *it is filed too late.* Hall's Safe Co. v. Herring-Hall-Marvin Safe Co., 31 App. D.C. 498." 15 U.S. C. 1063 Annotated.

49. "A notice of opposition to an application for registration of a trade-mark containing no proper allegations of confusing similarity of the involved trade-marks and that they *were used on goods of the same descriptive properties was fatally defective for failure to allege grounds of oppositions* as required by former sections 86 of this title. Mishawaka Rubber Co., 1940, 109 F.2d 219, 27 C.C.P.A. Patents 888." 15 U.S.C. 1063 Annotated.

50. "An allegation in a notice of opposition to an application for registration of a trade-mark that opposer will be damaged by registration is not sufficient to comply with this section. Id."

51. "Commissioner of Patents has duty and jurisdiction to determine in first instance sufficiency of paper filed as opposition. U.S. ex rel. Symons v. Roberts, 1929, 30 F. 2d 566, 58 App. D.C. 324." 15 U.S.C. 1063 Annotated.

52. *"Where the "Plymold Corporation" was a corporate entity prior to the date upon which competitor applied for registration of the mark "Plymold". applicant was not entitled to exclusive use of its*

mark at the date thereof, and registration was inadvertently granted, and hence the Plymold Corporation was entitled to cancellation of registration in proceedings brought for that purpose. Haskelite Mfg. Corp. v. Plymold Corp., 1947, 162 F. 2d 464, 34 C.C.P.A. Patents 1172." 15 U.S.C. 1064 Annotated.

53. "In trade mark registration proceeding, wherein priority in time of adoption and use of respective marks of applicant and opponent on domestic hot water heaters was in issue, *undated circulars of opponent,* indicating that its oil burning device could be used to provide hot water for the home, *were of no avail.* Eureka Williams Corp. v. McCorquodale, 1953, 205 F.2d 155, 40 C.C.P.A. Patents 1028, certiorari denied 74 S. Ct. 121, 346 U.S. 872 98 L. Ed. 380." 15, U.S.C. 1067 Annotated.

54. "Where verified allegation of use of trade-mark in application for registration of trade-mark was not challenged in notice of opposition, applicant was not required to furnish further evidence of use. Huntington Laboratories v. Onyx Oil & Chemical Co. Cust. & Pat. App. 1948, 165 F.2d 454." 15 U.S.C. 1067 Annotated.

55. "Registration as a trade-mark for men's coats, vests, and trousers, of a mark consisting of a full-length representation of a tiger, reclining upon a pedestal containing the words "The Royal Tailors Chicago-New York," is properly denied upon the opposition of a company which, before the adoption by the applicant of such mark, had adopted and continually used the words "TIGER BRAND" and a mark consisting of a representation of *a tiger's head* upon clothing, and particularly upon coats, overcoats, duck coats, overalls, and shirts. Royal Tailors v. J. M. Robinson, Norton & Co. 1916, 45 App. D.C. 14." 15 U.S.C. 1067 Annotated.

56. "Where a party whose application for a trade-

mark was rejected, sought, more than two years afterwards, to amend his application, so as to bring it under the provisions of the new law, but the commissioner held that the application was not pending within the meaning of former section 89 of this title, his decision virtually refused registration, and was appealable. In re Mark Cross Co., 1905, 26 App. D.C. 101." 15 U.S.C. 1071 Annotated.

57. "Where record in opposition proceeding contained nothing but the pleadings, applicant's mark, one of its labels and several of opposer's registrations, together with its label, it was incumbent upon Court of Customs and Patent Appeals to determine degree of protection which law afforded. Pink Lady Corp. v. L.N. Renault & Sons, Inc. 1959, 265 F.2d 951, 46 CCPA 865." 15 U.S.C. 1071 Annotated.

58. "While opposer to a trademark registration, as a prior registrant, was entitled to rely on his registration in opposition to the applicant, and was under no burden to take testimony to prove actual confusion, where issue was to be resolved solely by consideration of two marks, registration alone gave no basis for finding that confusion would be likely. Melville Shoe Corp. v. Lester Pincus Shoe Corp., Cust & Pat. App. 1962, 305 F. 2d 884." 15 U.S.C. 1071 Annotated.

59. "In suit for adjudication that trademark was entitled to registration and for declaratory judgment defendant's registered trade-mark, allegations of infringement in defendant's counterclaim established existence of "actual controversy" and court had jurisdiction over action for declaratory judgment. Miles Shoes, Inc. v. R. H. Macy & Co. D.C.N.Y. 1951, 102 F Supp. 977, reversed on other grounds 199 F. 2d 602, certiorari denied 73 S.Ct.

650, 345 U.S. 909, 97 L.Ed. 1345. 15 United States Code 1071 Annotated.

60. Failure to claim in Opposition that Opposer has used trade-mark before the date of first use by the Applicant makes Opposition invalid and unprobatable.

61. "OVER HEAD DOOR," registered for use on garage doors was subject to cancellation as descriptive. Barber-Colman Co. v. Overhead Door Corporation, 1933, 65 F. 2d 147, 20 C.C.P.A. Patents 1118." 15 U.S. Code 1064 Annotated.

The words 'FLYING' AND 'LINE' in Flying Tiger Line are merely descriptive of airline services of Appellee, and thus unregistrable, requiring Commissioner motu proprio to cancel registration erroneously issued originally.

62. Notice of opposition cannot be amended, after period allowed for filing such notice, so as to carry back the date of the opposer's alleged use of the mark to a period prior to that stated in the notice of opposition. Hannis Drilling Co. v. George W. Torrey Co., 1909, 32 App. D.C. 530." 15 U.S.C.A. 1063.

63. "Manufacturer receiving public cannot rely on registered trade-mark as basis for opposition to registration of same mark. Federal Products Co. v. Lewis, 1927, 23 F. 2d 759, 57 App. D.C. 338." 15 U.S.C. 1067 Annotated.

64. "One opposing registration of trademark must be guiltless of false representations. Id."

65. "The statement in an opposition to an application for registration of a trademark, that the mark of the applicant so closely resembles the marks of the apposer as to be calculated to confuse and deceive purchasers and the public generally, is a conclusion of law, which is not admitted by a de-

murrer to the opposition. Wm. A. Rogers v. International Silver Co. 1907, 30 App. D.C. 97." 15 U.S.C. 1067 Annotated.

66. "Appellate jurisdiction generally. Where jurisdiction of federal district court of trademark infringement action was based on diversity of citizenship and amount in controversy, exclusive of interest and costs, in excess of statutory amount, and on former section 97 of this title, court of appeals had jurisdiction of appeal from interlocutory order enjoining defendant from prosecuting proceeding in Patent Office for cancellation of certificates of trademark registration previously issued to plaintiff. Dwinell-Wright Co. v. National Fruit Product Co. Inc., CCA, Mass. 1942, 129 F. 2d 848." 15 U.S.C.A. 1121.

67. The Court of Customs and Patent Appeals has jurisdiction with reference to trademarks only to review questions appealed from Commissioner *and to give official* directions with reference thereto, and has no authority to enjoin use of a particular mark, John Morrel & Co. v. Doyle, C.C.A. Ill. 1938, 97 F. 2d 232, certiorari denied 59 S.Ct. 146, 305 U.S. 643, 83 L.Ed. 415.

68. "The ownership of a trade name is a property right, and especially so where the trade name embodies the distinctive part of the owner's corporate name. Safeway Stores, Inc. v. Chickasha Cotton Oil Co. D.C. Okl. 1959, 180 F. Supp. 534." 15 U:S.C.A. 1051.

69. "The registration of a trademark conveys no property right, and ownership of the mark depends upon its adoption and use and not on its registration. Campbell Soup Co. v. Armour & Co., D.C. Pa. 1948, 81 F. Supp. 114, affirmed 175 F. 2d 795, certiorari denied 70 S.Ct. 88, 338 U.S. 847, 94 L. Ed. 518." 15 U.S.C.A. 1051.

Appendice 'O'

UNITED STATES
GOVERNMENT
PRINTING OFFICE

December 14, 1982

Mr. Robert Slaughter
The New Britain Export
P.O. Box 1094
Manila, Philippines

Dear Mr. Slaughter:

This is in reply to your letter of October 30, 1982, requesting Information about the Official Gazette.

The Official Gazette-Patents is published weekly. It is released for distribution on Tuesday of each week. If a holiday falls on Tuesday it is released on Wednesday. In most cases mailing of the Official Gazette is accomplished on the publication date.

The November 18, 1980 issue of the Official Gazette-Patents was released for distribution on the issue date. Mailing was completed on November 19, 1980.

We hope the above information will assist you.

Sincerely,

(Sgd.) JOHN D. BENNETT
JOHN D. BENNETT
Superintendent of Department
Printing Management Division

Appendice 'P'

UNITED STATES
GOVERNMENT
PRINTING OFFICE

December 14, 1982

Mr. Morton F. Meads
International Civil Liberties Council
P.O. Box 1094
Manila, Philippines

Dear Mr. Meads:

This is in reply to your letter of October 29, 1982, inquiring as to the dates that the Official Gazette were issued in 1980.

Our records for the date of the Official Gazette-Patents only go back to the August 5, 1980 issue. Of the 22 issues printed between August 5 and December 30, 1980, 13 were mailed on the date of issue. Eight were mailed one day late and one went out two days late The following issues were mailed one day late: August 19, September 30, October 7, 14, 21, November 11, 18 and December 23. The issue of September 2 was mailed two days late.

We hope the above information will be helpful.

Sincerely,

(Sgd.) JOHN D. BENNETT
JOHN D. BENNETT
Superintendent of Department
Printing Management Division

Appendice 'Q'

UNITED STATES
GOVERNMENT
PRINTING OFFICE

February 8, 1983

Mr. Morton F. Meads
International Civil Liberties Council
P.O. Box 1094
Manila, Philippines

Dear Mr. Meads:

In response to your letter dated January 27, 1983, please be advised that the Freedom of Information Act does not apply to the U.S. Government Printing Office. This is because the Office is a legislative branch agency and by definition is excluded from the application of the Act. The Government Printing Office does not, in the ordinary course of business, divulge or disseminate the identities of subscribers to Government publications. However, upon receipt of your letter, I spoke to an attorney in Lyons & Lyons, of Washington, D.C., and Robert E. Lyons, of Lyons & Lyons of Los Angeles, California, and asked if either gentleman had any objection of providing the information you requested. Because they had no objection at that time, I have decided to supply the information you requested

GPO records indicate that both firms, Lyons & Lyons of Washington, D.C. and of Los Angeles, California, as separate entities, were on the subscription list for both the Official Gazette, Trademarks and Official Gazette, Patents for November and December 1980.

If you have any further inquiries, please address them to me at the following address:

Office of the General Counsel, Room C-814
U.S. Government Printing Office

732 North Capitol Street, N.W.
Washington, D.C. 20401

A copy of this letter is being forwarded to both law firms.

Sincerely,

(Sgd.) THOMAS O. MAGNETTI
THOMAS O. MAGNETTI
Assistant Counsel

cc: Alan Ptak
Robert E. Lyons
William Mouzauires

Appendice 'R'

TRANS WORLD AIRLINES
130 Madison Avenue, New York, U.S.A.

October 4, 1961

Office of the
SENIOR VICE PRESIDENT
SYSTEM GENERAL MANAGER

Mr. Morton F. Meads
International Commander
Flying Tigers International
P.O. Box 1094
Manila, Philippines

Dear Mr. Meads:

Thanks very much for your letter of August 22, 1961 and your offer to assist TWA relative to the hi-jacking problem.

* * * * *

Sincerely,

(Sgd.) F. D. HALL
F. D. HALL

Appendice 'S'

NEWS ITEM FROM PHILIPPINE EVENING NEWS

WARNING ON OIL CLAIMS

The Flying Tiger Oil Company, a United States corporation, has issued a stern warning through its Philippine counsel, Sotto and Sotto law offices against any trespassing, claim jumping, attempts of interloping by any entity in its exclusive oil lease concession area west of the Philippines and Palawan. The exclusive oil lease concession of the Flying Tigers Oil Company covers the entire area from the Western boundaries of the Philippines established by the Treaty of Paris of 1898. Both above sea level and submerged, westward to the coast of Vietnam. The continental shelf of the Philippines ends a few miles off the coast of Palawan at the Palawan through, but within the boundaries set by the Treaty of Paris of 1838.

Appendice 'T'

NEWS ITEMS FROM PHILIPPINES
BULLETIN TODAY

PCG NEEDS NEW FACILITIES

Does the Philippine Coast Guard lack the facilities and equipment to conduct regular patrol along the boundary lines of the Philippine waters?

This was the question asked by same quarters following apprehension of a Taiwanese vessel in Tawi Tawi. They said that foreign boats and crew that gained illegal entry into the the Philippine waters have alarmingly increased in 10-year span.

It was reported that "most apprehensions made were very much inside the Philippine territorial waters and

observers are wondering why fishing boats of foreign countries can penetrate the interior seas of the Philippines often and easily."

"If we have proclaimed a 200-mile economic zone, why is it that the Coast Guard is unable to patrol outer boundaries rather than wait for intruders to come inside our archipelago?," they asked.

Sources said that the Coast Guard needs a steady infusion of funds if it is to keep pace with other countries with claims in the South China Sea. Singapore and Malaysia have announced recently that they are buying patrol and gun boats to tighten their security, while the Philippines said it will add two more patrol boats from funds to be paid by the United States for rental of military bases.

Some islands in West of Palawan were reportedly being claimed by at least four countries such as Republic of Vietnam, People's Republic of China, Republic of Morac-Songharati-Meads, and the Philippines.

Each of these, same sources said, have warned other countries to stay out and there has not yet been any actual fight. The Republic of Morac-Sangharati-Meads has allegedly contracted the entire area to the Flying Tigers Oil Co., Inc. of the United States, while China has proposed to hold biddings.

The Philippines had announced that the New Denison of Canada will join in drilling of oil for a contract from the government. "This will certainly intensify naval activity in the area and the Coast Guard should protect drillers," they said.

Appendice 'U'

News items from Philippines Times Journal

OIL 'POACHERS' CAUTIONED

THE US-based Flying Tigers Oil Co. yesterday warned Western oil explorers, including those with Philippine subsidiaries, from searching or into its concession areas in the South China Sea.

Those companies that violate its concession rights, Flying Tigers Oil said, face huge damage suits similar to those that had already been won though yet to be enforced.

A company spokesman said Flying Tigers has owned the leases for certain areas nearby Palawan Islands for the last 20 years.

The American company cautioned the Western oil companies against getting concession rights or leases from Mainland China, which has also claimed territorial jurisdiction over the disputed areas.

It listed the foreign companies as Total of France, Arco of Texas, Amoco of Indiana, Japan National Oil Co., and the US-based Conoco.

China, the spokesman said, is merely trying to raise money for its large-scale industrialization program and for payments on its debts with Japan.

Flying Tigers Oil did not specify from which country it got its 20-year old leases. But its spokesman threw hints that the leases were awarded by the Republic of Morac-Songharati-Meads.

He said that the republic was the first organized government in the South China Sea formed by British Captain James George Meads in the 1800's.

South China Sea, it said, is correctly known as the South Humanity Sea or Meads Sea.

The territory covered by Meads-founded government was called "Territory of Captain James George Meads," later "Territory of Franklin Meads," and "Kingdom of Humanity."

The Meads government, he said was by-passed by European and Asian colonial powers for its lack of visible wealth the company claimed.

Flying Tigers Oil said also that member-countries of the Association of Southeast Asian Nations should pressure China to renounce its claims more than 12 miles south of Hainan island.

APRIL 1, 1976
MANILA DAILY EXPRESS
OVER A CUP OF COFFEE
By Teodoro F. Valencia

'ROLLING COFFINS' MUST BE STOPPED

* * * * *

Let's not give too much importance to that threat the Flying Tigers that they won't permit Philippine explorers to dig in the "Reed area". The Flying Tigers benefit from their press releases that we publish with innocence. We can threaten too if we want to, but for us it's a little more serious. Flying Tigers can afford to anything. It's up to us to ignore them.

Appendice 'V'

UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
717 Madison Place, N.W.
Washington, D.C. 20439

November 2, 1984

George E. Hutchinson
Clerk

Telephone: 633-6550
Area Code 202

AIRMAIL

Mr. E. R. Uy
In-House Counsel
Flying Tigers Oil Company, Inc.
P. O. Box 1094
Manila, Philippines

RE: The Flying Tigers Oil Company, Inc. v. The Flying Tiger Line, Inc.
Appeal No. 84-602

Dear Mr. Uy:

I am returning your entry of appearance and your notice of appeal for the following reason:

The mandate of the Court in this appeal was issued on October 29, 1984, and therefore the Court no longer has jurisdiction of the matter. In any event, Mr. Soriano was the counsel of record before this Court and it is unnecessary for us to act on your entry of appearance.

Decisions of this Court can be reviewed by the U.S. Supreme Court but it must be on a petition for writ of certiorari made to that Court. I am sending you a short informational sheet concerning the filing of such

petitions. Please note that a petition for writ of certiorari must be filed within 90 days of this Court's decision.

Very truly yours,

(Sgd.) GEORGE E. HUTCHINSON
GEORGE E. HUTCHINSON

Enclosures
GEH:bam

Appendice 'W'

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

THE FLYING TIGERS OIL COMPANY, INC.,

Appellant,

v. APPEAL NO 84-602

THE FLYING TIGER LINE INC.,

Appellee.

NOTICE OF APPEAL

Notice is hereby given that the Flying Tigers Oil Company, Inc., appellant above named, hereby appeals the United States Supreme Court from the Final Decision decided on October 5, 1984 entered in this action presumably on the same day.

The statutes under which this appeal is taken are 28 U.S.C. 1254, 1256, 1338; the Trademark Act of 1946 as amended (Public Law 489, 79th Congress, Chapter 540, 60 Stat. 427); and the Constitution of the United States, Article III.

This appeal contains important, novel, unprecedented legal and constitutional issues including judicial anarchy that increases the work load of the United States Supreme Court.

Motions for reconsideration, clarification, and/or amendment of decision are appropriate, and we desire to file them but are constrained not to do so for fear that racial discrimination will be applied against counsel to the prejudice of appellant. Additional counsel, who are American citizens is being sought, but this is difficult and time consuming because the membership of the bar of this court and others is confidential and not available to litigants to use in availing of the law on equal access to the courts.

(Sgd.) E. R. UY
E. R. UY
Attorney at law
FLYING TIGERS OIL CO., INC.

DATED: October 20, 1984.

Appendice 'W-1'

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CERTIFICATE OF SERVICE

This is to certify that I have caused the service of the entry of appearance and notice of appeal in case No. 84-602 upon Stanley Sokoloff, ESQ, of the Blakely, Sokoloff, Taylor and Zafman Law Office, Suite 244, 9601 Wilshire Boulevard, Hollywood, California, USA, and Stanley Sokoloff, ESQ, by depositing a true copy thereof in the mail at Manila, Philippines, with prepaid postage for air mail on October 25th, 1984.

(Sgd.) E. R. UY
E. R. UY
In-House Counsel
For Appellant

NOTARIZATION

Subscribed and sworn to before me this 25th day of October, 1984.

(Sgd.) JAMES J. BELTRAN
JAMES J. BELTRAN
NOTARY PUBLIC
Until Dec. 31, 1984
PTR No. 390638 '83 MLA.
TAN B4363-MO219-A

Doc. No. 138
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Book No. XLIX
Series of 1984

Appendice 'X'

MEMORANDUM OF ARGUMENT

I—JUSTIFICATION FOR SUPREME COURT AND CAFC JURISDICTION AND RESOLUTION ON THE MERITS.

A—Rule 17 of the Rules of the Supreme Court (1980) state:

"CONSIDERATIONS Governing Review on Certiorari

".1. x x x x (a) x x x x or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the Court's power of supervision.

* * * * *

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

".2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari."

It is clear therefore that the Supreme Court agrees by the above rule that it has jurisdiction over appeals and Petitions for Certiorari to the Court of Appeals for the Federal Circuit in Washington, D.C., which court was formerly the Court of Customs and Patent Appeals. Likewise, since CAFC (NEE Court of Customs and Patent Appeals) has exclusive jurisdiction on ap-

peals and petitions for certiorari from the Trademark Trial and Appeals Board (equivalent to a U.S. District Court), the Supreme Court also agrees that it has jurisdiction over the subject matter of this case emanating from the United States Patent and Trademark Office and the Trademark Trial and Appeal Board therein. These admissions or understandings should make all other references or bases for jurisdiction unnecessary.

Rule 17.1. (a) states " or has so far departed from the accepted and usual course of judicial proneedings, or, so far sanctioned such a departure of a lower court, as to call for an exercise of the court's power of supervision." The itemized violations of the Rules of Fed. Civ. Procedure and of due process and equal protection clearly show that the PTO/TTAB has departed from the accepted and usual course of judicial proceedings. The refusal of CAFC to exercise its judicial obligations of Review and Correction justifies in the extreme the need of the Supreme Court to review by certioari and take corrective judicial action.

Rule 17.1. (a) Further cites "* * * exercise of the Court's power of supervision." This is an important statement inasmuch as the Court of Appeals for the Federal Circuit in its final decision, Appendice 'C' of this Petition, pp. xxiv-xxviii states on Page 3 thereof:

"This court reviews final decisions of the board. We are not empowered to exercise supervisory authority during proceedings."

The said Final Decision of the CAFC clearly contravenes the very word of the Supreme Court as represented by its rules, in particular Rule 17 as quoted above. Thus, the CAFC has 'sanctioned such a departure by a lower court (in this instance the Federal Trademark Trial and Appeal Board).

Rule 17.1. (e) States that when a Federal Court of Appeals has decided an important question of federal

law that should be settled by the Supreme Court of has decided a federal question in a way in conflict with applicable decisions of this court the Supreme Court will consider the Petition for Writ of Certiorari (and apparently any petition for extraodinary writ) and implies that the existence of such conditions would make such a petition meritorious for review and action by the Supreme Court. The Petitioners will show below decisions in conflict with actions/orders of the Trademark Trial and Appeal Board and of the CAFC.

The important questions of Federal Law are briefly:

(1) Violations of the Federal Rules of Civil Procedure;

(2) Violations of the Federal Trademark Law;

(3) Violations of the Constitution providing for due process and equal protection of the law;

(4) Violation by the CAFC of its judicial and legal and constitutional obligations to rule on all the itemized violations on the merits; and its refusal to comply with the dictates of Federal Statute, the applications of which is not within the discretion of either the CAFC, the Supreme Court or the PTO/TTAB, in the matter subject of the Petition of herein Petitioners for Mandamus/Prohibition joined with Appeal No. 84-602.

The fact that the CAFC says that it does not have judicial supervisory powers over the Trademark Trial and Appeal Board, when in fact it is the only court other than the Supreme Court that does is an important federal question of law that very definitely should be settled at the earliest possible time.

The fact that the CAFC says, in essence, that it has no immediate jurisdiction over petitions/appeals for violations of the constitutional rights of parties is an important question of federal and constitutional law that should be settled at the earliest possible time.

The laws, in combination, show that in such matters emanating from the Patents and Trademark Office/ Trademark Trial and Appeal Board, the CAFC is the only court standing between those entities and the Supreme Court, therefore common sense indicates that the CAFC should contentedly and readily fulfill its judicial responsibility and obligations before such matters are presented to the Supreme Court. As shown by Rule 17 of the Rules of the Supreme Court the Supreme Court agrees that it has jurisdiction and responsibility. That being so, then the only federal court between the PTO/TTAB is the Court of Customs and Patent (now the CAFC). Thus the CAFC is compelled by law and Constitution to accept and decide all questions of the violations of the Constitution, all charges of violation of the Trademark Law (which are purely questions of law) as soon as they are presented to it. The idea of CAFC to postpone its Jurisdiction of questions of violations of Constitutional Rights and of Statute Law and of the Fed. Rules of Civ. Proc. is demoralizing to the bar and unjustified by law, constitution and judicial precedent in addition to morality and equity.

B—Further, the Court of Customs and Patent Appeals (now CAFC) has jurisdiction to give what amounts to be advisory opinions in some cases (note, the constitutional status of the Court of Claims, 1955, 58 Harv. L. Rev. 160, 37 Tul. L. Rev. 144).

The current status of the Court of Customs and Patent Appeals (now CAFC) came before the Supreme Court in 1962 in two cases decided under the name of Glidden Company v. Zdanok (1962, 82 S.Ct. 1459, 370 U.S. 530, 8 L.Ed. 2d 671, noted 1962, 76 Harv. L. Rev. 160, 37 Tul. Rev. 144). In this case the Supreme Court held that the Court of Customs and Patent Appeals is a 'Constitutional' court. In this view, the Court of Customs and Patent Appeals became a constitutional court in 1958 (82 S.Ct. at 1491-1492, 370 U.S. at 542).

Both opinions for the justices in the majority recognized that the jurisdiction of the Court of Customs and

Patent Appeals to review tariff commission finding in proceedings relating to unfair practices in the Import Trade may well go beyond the judicial power that can be given to a "Constitutional" court (28 U.S.C.A. ** 1543). Justice Clark's opinion asserted flatly that such matters are not within the judicial power, while Justice Harlan noted the doubt but put off definitive decision until such a case shall arise. The above entitled Flying Tigers Oil/Flying Tigers International/Robert Zlomke/Morton F. Meads case is that anticipated case.

In any event, both opinions regarded this as a very small portion of the business of the Court of Customs and Patent Appeals, insufficient to alter the basic character of the court as "constitutional".

The tests applied by Justices Black and Harlan:

> "* * * * whether a tribunal is to be recognized as one created under Article III depends basically upon whether its establishing legislation complies with the limitations of that article; whether, in other words, its business is the federal business there specified and its judges and judgment are allowed the independence there expressly or impliedly made requisite." are satisfied (82 S.Ct. at 1474, 370 U.S. at 552).

It has consistently been held that the judicial power of the United States must be vested in Aricle III courts (102 S.Ct. at 2875-2880).

In the Marathon Case Justices Rehnquist and O'Conner concurred in the plurality judgment only. They found it unnecessary to decide whether the court's earlier decisions on 'Constitutional' and 'Legislative' Courts "Support a general proposition and three tidy exceptions, as the plurality believes, or whether instead they are but landmarks on a judicial 'Darkling Plain' where ignorant armies have clashed by night, as Justice White apparently believes them to be." (102 S.Ct. at 2881).

Justice White dissented at length, joined by Chief Justice Burger and Justice Powell. He concluded that "there is no difference in principle between the work that Congress may assign to an Article I Court and that which the Constitution assigns to Article III Courts. * * * * Article III is not to be read out of the constitution; rather, it should be read as expressing one value that must be balanced against competing constitutional values and legislative responsibilties. This court retains the final word on how that balance is to be struck." (102 S.Ct. at 2893). In the plurality in Glidden Justice Harlan wrote that this distinction "has been productive of much confusion and controversy." (82 S.Ct. at 1464, 370 U.S. at 534). Neither the confusion nor the controversy have ended in the ensuing 24 years.

The herein Petition is a 'Case and Controversy'; and the Case 84-602 the CAFC from which it arose is a 'case and controversy'; and the Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief joined with said Appeals is also a 'case and controversy'; and the Case in the PTO/TTAB from which it arose is a 'case and controversy'. The judicial power of the United States, according to the constitution, extends to "all cases' of three designated types, and to "controversies" of six other types. The courts of the United States do not sit to decide questions of law presented in a vacuum, but only such questions as arise in a "case or controversy". The two terms can be used interchangeably, for, we are authoritatively told, a "controversy", if distinguishable at all from a "case", is distinguishable only that it is a less comprehensive term, and includes only suits of a civil nature. (Aetna Life Ins. Co. v. Haworth, 1937, 57 S.Ct. 461, 463, 300 U.S. 227, 239, 81 L.E. 617, Quoting from Re Pacific Ry. Comm., C.C.D. Cal. 1887, 32 F. 241, 255).

What is a "Case or Controversy" that is justifiably in the Federal Courts? The answer of Chief Justice Hughes is classic if cryptic. He said: "A 'controversy'

in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a degree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts" (Aetna Life Ins. Co. v. Haworth, 1937, 57 S.Ct. 461, 464, 300 U.S. 229, 240-241, 81 I.Ed. 617 (citations omitted).

Justiciability is the term of art employed to give expression to this dual limitation placed upon Federal Courts by the Case and Controversy Doctrine. (Flast v. Cohen, 1968, 88 S.Ct., 1942, 1949-1950, 392 U.S. 83, 94, 95, 20 L. Ed. 2d 947).

Whether the decisions on justiciability are cast in terms of Article III limitations on judicial power or in terms of wise refusal to exercise acknowledged power, there are few "clear rules. This area of the law is a "conceptual Morass". (Haitian Refugee Center v. Civiletti, D.C. Fla. 1980, 503 F. Supp. 442, 461). This has led to continuing debate on the extent to which courts should in fact be free to avoid awkward decisions on grounds of 'Prudence' falling some where between implementation of strict principle and mere caprice. (Compare BICKEL. The Supreme Court 1960 Term: Foreword: The Passive Virtues, 1961, 75 Harv. L. Rev. 40, with Wechesler, Toward Neutral Principles of Constitutional Law, 1959, 73 Harv. L. Dev. I, Gunther, The Subtle Vice of the "Passive Virtues," — a Comment on Principle and Expediency in Judicial Review 1964, 64 Col. L. Rev. 1). See also Brilmayer, the Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement, 1979, Harv. L. Rev. 297; Tushnet, The Sociology of Article III: A response to Professor Bril-

mayur, 1980, 93 Harv. L. Rev. 1698; Brilmayer, A Reply, 1980, 93 Harv. L. Rev. 1727).

In "Law of Federal Courts" by Charles A. Wright, 1983 pp. 54 it is stated:

> "In private litigation there is, in fact, very little difficulty. Now that the dispute over whether the federal courts can render declaratory judgments has been satisfactorily resolved, most private litigation is of a nature clearly meeting the tests of justiciability. The main body of law on "case or controversy" comes from cases raising questions of constitutionality of statutes, or cases seeking judicial review of administrative action. For this reason this subject is usually treated with care in courses and treaties on constitutional law and administrative law, * * *."

C.—IF A CASE OR CONTROVERSY IS "CAPABLE OF REPETITION" AND REASONABLE EXPECTATION THAT THE SAME COMPLAINING PARTY WOULD BE SUBJECTED TO THE SAME ACTION AGAIN, THE CASE OR CONTROVERSY SHOULD BE REVIEWED. (*Murphy v. Hunt*, 1982, 102 *S.Ct.* 1181, *L.Ed.* 2*d* 353; *Weinstein v. Bradford*, 1975, 96 *S.Ct.* 347, 423 *U.S.* 147, 46 *L.Ed.* 2*d* 350.[3] Applied to the conditions in the above-entitled Petition, the CAFC has said that it would have jurisdiction if brought to it again after a final decision by the Trademark Trial and Appeal Board. In this instance, no final decision is legally or constitutionally justifiable because the statute involved, Trademark Law, specifically limits opposition to 'filing' witthin 30 days of publication unless there is a written request for extension filed prior to the expiration of the 30 day period. No written request for extension was ever filed. Thus the Supreme Court Ruling that Statute Law cannot be interpreted when its meaning is clear, nor adjusted or amended by executive or administrative fiat are applicable. The

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8—All emphasis supplied by petitioners.

CAFC was therefore obligated to rule on that legal matter immediately and issue the Writ of Mandamus/Prohibition — which burden now falls upon the Supreme Court.

Whether the function or proceeding in the TTAB, and now the CAFC, is judicial or administrative is not in question. It is often said that if a tribunal has discretion as to whether it will issue an order or grant a privilege its function is administrative. (E.G. R.C., 1949, 62 Harv. L. Rev. 1067, 1069). However, there is no exercise of discretion when a court applies the standards of a statute. (Ullman v. U.S. 1956, 76 S.Ct. 497, 350 U.S. 422, 100 L. Ed. 511; U.S. v. First City Nat. Bank of Houston, 1967, 87 S.Ct. 1088, 1093-1094, 386 U.S. 361, 369-370, 18 L.Ed. 2d 151). Naturalization proceedings are held to be judicial (Tutun v. U.S. 1926, 46 S.Ct. 425, 270 U.S. 568, 70 L.Ed. 738). Similarly an order of a state court denying a license to practice law has been held reviewable in the United States Supreme Court (In re Summers, 1945, 65 S.Ct. 1307, 325 U.S. 561, 89 L.Ed. 2d 1795; Dasher v. Supreme Court of Texas, C.A. 5th, 1981, 658 F.2d 1045, 1049-1050). It apparently has been easier to find "judicial" action where the proceedings involve important human rights, such as in the above-entitled case wherein the Flying Tiger Line is trying to usurp the name 'Flying Tigers' of the Flying Tigers Oil Company and the Flying Tigers International; and wherein the mark 'Flying Tigers' is a false designation for the FTiger Line who are not, never have been, and never will be the "Flying Tigers", and are trying to obtain credit and charisma that does not belong to that commercial entity.

In a case involving the Federal Radio Commission the Supreme Court held that it could hear cases in which the Court below had passed on orders of the Commission, since the proceedings below were now 'judicial'. (After Congress amended the Statute, 1933, 53 S.Ct. 627, 289 U.S. 266, 77 L.Ed. 1166). In "Law of Federal Courts" by Charles A. Wright, 1983, it is said:

"Application of the substantial evidence test was considered a legal question on the theory that a capricious order of the Commission would be outside the authority conferred on it by statute. This is the reasoning on which all review of administrative determinations is now justified. Although the proceedings before the agency may be "Administrative", the courts can review "judicial" questions."

"A 1966 Statute allows the Comptroller of the Currency to permit certain bank mergers if he finds them justified by standards set out in the statute. If an antitrust proceeding is later brought attacking the merger, the court is to apply these same standards but it is to "review de novo the issues presented." (12 U.S.C.A. Sec. 1828 (c) (7).

The Supreme Court held that this did not require the courts to perform non-judicial tasks, and that it is valid, on the ground that "the courts are not left at large as planning agencies" and that the standards to be applied are familiar ones, and within "the area of judicial competence." (U.S. v. First City Nat. Bank of Houston, 1967, 87 S.Ct. 1088, 1094, 386 U.S. 361, 369-370, 18 L.Ed. 2d 251; and Chandle v. Houdebush, 1976, 96 S.Ct. 1949, 425 U.S. 840, 48 L.Ed. 2d 416).

There is a strong tradition that a party should be able to obtain Appellate Review in at least one court. Accordingly in 1944 a statute was passed to meet this situation when the Supreme Court could not muster a quorum to hear an Appeal under the Expediting Act in an important Anti-Trust Case (Act of June 9, 1944, c. 239, 58 Stat. 272; U.S. v. Aluminum Co. of America, 1944, 64 S.Ct. 1281, 322 U.S. 716, 88 L. Ed. 1557. A later phase of the same proceeding is reported in U.S. v. United States Dist. Court, 1948, 68 S.Ct. 1035, 334 U.S. 258, 92 L. Ed. 1351). Consequently, since the CAFC refused to review and refused jurisdiction, the Supreme Court should not also refuse. In the 1948 Revision of the Judicial Code this special statute was made applica-

ble to all cases where there is direct appeal from a District Court to the Supreme Court and a quorum is lacking. (28 U.S.C.A. Sec. 2109). Petitioner FTigers Oil filed its Notice of Appeal PROPERLY AND TIMELY, copy of which is an Appendice 'W' of this Petition, pp. cxx and which Appeal is parcel and part of this Petition for Certiorari, they being one and the same. "The usual method for review in the Supreme Court of decisions of the Courts of Appeals is by the Statutory Writ of Certiorari." (Law of Federal Courts" by Charles A. Wright, 1983). The court may issue the writ "upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree." (28 U.S.C.A. Sec. 1254 (1). This, it is clear that not only can the questions herein be presented to the Supreme Court for Writ of Certiorari to the CAFC, but that the latter Court, contrary to its own declaration in its final decision, Appendice 'C' of this Petition, pp. xxiv-xxviii, also has jurisdiction when these questions were raised to it prior to final decision in the TTAB — which is barred by Statute Law. The law therefore provides for jurisdiction on petition for certiorari directly from the TTAB to the Supeme Court or from the TTAB to the CAFC, or from the CAFC to the Supreme Court. There is a claim of federal jurisdiction in the appeal to the CAFC in 84-602 and the Petition of herein Petitioners for Certiorari/Mandamus/Prohibition/Declaratory Relief filed with the CAFC and, without giving due course thereto, it was joined with the Appeal 84-602 and included in CAFC's final decision.

Thus, as the court said of an earlier form of the present statute for review of certiorari to the Courts of Appeals, "The generality of this provision was not a mere matter of accident. It expressed the thought of Congress distinctly and clearly, and was intended to vest in this Court a comprehensive and unlimited power." (Forsyth v. City of Hammond, 1897, 17 S.Ct. 665, 668, 166 U.S. 506, 513, 41 L. Ed. 1095).

D.—THE COURT MAY ISSUE A WRIT OF CERTIORARI TO A COURT OF APPEALS REGARDLESS OF THE SUBJECT MATTER OF THE CASE, THE CITIZENSHIP OF THE PARTIES, OR THE AMOUNT IN CONTROVERSY. (*Whitney v. Dick*, 1906, 26 *S.Ct.*, 584, 202 *U.S.* 132, 50 *L. Ed.* 963). "It may issue such a writ although the Decision of the Court of Appeals is not a final judgment" (Charles A. Wright, "Law of Federal Courts, pp. 731, 1983). The Supreme Court has said that it should not review interlocutory orders of the Courts of Appeals "UNLESS IT IS NECESSARY TO PREVENT EXTRAORDINARY INCONVENIENCE AND EMBARRASSMENT TO THE CONDUCT OF THE CAUSE." (*American Const. Co. v. Jacksonville, T. & K. W.R. Co.* 1893, 13 *S. Ct.* 758, 763, 148 *U. S.* 372, 384, 37 *L. Ed.* 486). In every case in which it said this it did in fact review the order below, though it was not final, and this power to review interlocutory orders of the Court of Appeals has been exercised in many cases. (17 Wright, Miller & Cooper, Jurisdiction Sec. 4036, pp. 21-25. For an elaborate justification of the power of the court to do so, See Fortich v. Hammond, 1897, 17 S.Ct., 665, 166 (U.S. 506, 41 L.Ed. 1095).

The Supreme Court has power under the statute to grant certiorari before judgment in the Court of Appeals, so long as the case has been docketed in a Court of Appeals (Gay v. Ruff, 1934, 54 S.Ct. 608, 292 U.S. 25, 78 L.Ed. 1099). The Supreme Court has granted such writs where the case involved an important constitutional question, or some other matter of national significance (E. G. Dames & Moore v. Regan, 1981, 101 S.Ct. 2972, 453 U.S. 654, 69 L.Ed. 2d 918; U.S. v. Nixon, 1974, 94 S.Ct. 3090, 418 U.S. 683, 42 L.Ed. 2d 1039; Wilson v. Girard, 1957, 77 S.Ct., 1409, 354 U.S. 524, I L.Ed. 2d 1544; Youngstown Sheet & Tube Co. v. Sawyer, 1952, 72 S.Ct. 863, 865, 343 U.S. 579, 584, 96 L.Ed. 1153; U.S. United Mine Workers, 1947, 67

S.Ct., 677, 684, 330, U.S. 258, 269, 91 L.Ed. 884 Ex parte Quirin, 1942, 63 S.Ct. 1, 6-7, 317 U.S. 1, 19-20, 87 L.Ed. 3; Carter v. Carter Coal Co. 1936, 56 S.Ct. 855, 298 U.S. 238, 80 L.Ed. 1160). Even in these situations, there have been protests from justices who felt that a considered opinion from the Court of Appeals would be of sufficient assistance to the court to justify such delay as it would cause (Youngstown Sheet & Tube Co. v. Sawyer, 1952, 72 S.Ct., 775, 343 U.S. 937, 96 L.Ed. 1344 (separate opinion of Justices Burton and Frankfurter). The power to grant certiorari before judgment is also used to bring up a case that involves an issue also presented by a case then pending before the Supreme Court (E. C. Taylor v. McElroy, 1959, 79 S.Ct. 1428, 1429, 360 U.S. 709, 710, 3 L. Ed. 2d 1528; Brown v. Board of Educ., 1952, 73 S. Ct. 1, 2, 344 U.S. 1, 3 97 L. Ed. 3; cf. Turner v. City of Memphis, 1962, 82 S. Ct. 805, 807, 369 U.S. 350, 353-354, 7 L. Ed. 2d 762).

The Supreme Court may grant Certiorari on Petition of "any party". In some cases where certiorari has been granted prior to judgment in the Court of Appeals it has been the United States, which was successful in the District Court, that has sought review by petiticning for certiorari (U.S. v. Nixon, 1974, 94 S. Ct. 3090, 418 U.S. 683, 41 L. Ed. 2d 1039; Youngstown Sheet & Tube Co. v. Sawyer, 1952, 72 S. Ct. 863, 343 U.S. 579, 96 L. Ed. 1153; U.S. v. United Mine Workers, 1947, 67 S. Ct. 677, 330 U.S. 258, 91 L. Ed. 884; U.S. v. Bankers' Trust Co., 1935, 55 S. Ct. 407, 410, 294 U.S. 240, 294, 79 L. Ed. 885).

It should be noted that the Appeal filed with the CAFC was refused and returned to the FTigers Oil's counsels with the direction that appeal can be had to the Supreme Court from decisions of the CAFC but only by Petition for Certiorari. See Appendices 'V' and 'W' pp. cxx-cxxiii. Consequently, though FTigers Oil has the right of appeal it is compelled to proceed by Petition for Certiorari/Mandamus/Prohibition/Declarato-

ry Relief. This however enables Petitioners to bring all the questions before the Supreme Court. This was also done in Williams v. Mayor and City of Baltimore, 1933, 53 S. Ct. 431, 289 U.S. 36, 77 L. Ed. 1015, and in Village of Schaumburg v. Citizens for a Better Environment, 1980, 100 S. Ct. 826, 444 U.S. 620, 63 L. Ed. 2d 73.

The Supreme Court has required that the entire record of a case be sent up for decision of the entire matter in controversy (Loewe v. Lawlor, 1908, 28 S. Ct. 301, 208 U.S. 274, 52 L. Ed. 488). The SUPREME COURT HAS SAID "The task of a Court of Appeals to decide all properly presented cases coming before it, except in the rate instances, as for example the pendency of another case before this Court raising the same issue, when certification may be advisable in the proper administration and expedition of judicial business." (43 Iowa L. Rev. 432).

There is support for direct appeal of an interlocutory order of a District Court in a Civil Case, 28 *U.S.C.A. Sec.* 2101 (*b*)...*See Rule* 11.2, 1980 *Supreme Court Rules. The Decision of the CAFC is a final Decision. TTAB is equivalent to a U.S. District Court.*

The Federal Courts have the power to overlook late filing of Appeals or Petitions for Writs; *but this power should not be confused with the obligation of all courts to follow, implement and enforce the specifics of Statutes, and that is the subject of the Petition for Mandamus/Prohibition and Appeal to the CAFC of the Final Act/Notice/Order that the PTO/TTAB was giving and did give due course to an Opposition/Complaint after the 30-day period from publication had expired without any written request for extension. This is the Statute. It is the law, and it is not subject to evasion, discretionary extension by either the Courts the Commissioner of Patents and Trademarks or the Trade-*

mark Trial and Appeals Board — and therefore is that final, precise and definitive act that is immediately appealable either by direct appeal or by Writ of Certiorari. The CAFC has denied both erroneously (i.e. both Appeal and Petition for Writs), apparently confusing the rights of the courts to grant any extension at any time with the absence of any such right on the part of the Commissioner of Patents and Trademarks and the TTAB inasmuch as their procedure and action is fixed by Statute and is not discretionary. It is this that the Supreme Court should rule upon forthwith and inform the CAFC and the TTAB and the Commissioner of Patents and Trademarks that they cannot deviate from Statute Law when its dictates are clear.

On direct appeals from district courts, and on certiorari from a Court of Appeals, no limitations apply. The writ brings the whole case before the Supreme Court (Lutcher & Moore Lumber Co. v. Knight, 1910, 30 S. Ct. 505, 217 U.S. 257, 54 L. Ed. 57) and it may consider all issues in the case that have been properly raised below (FTC v. Travelers Health Assn., 1960, 80 S.Ct. 717, 362 U.S. 293, 4 L.Ed. 2d 724; Marconi Wireless Tel. Co. of America v. Simon, 1918, 38 S.Ct. 275, 277, 246 U.S. 46, 57, 62 L. Ed. 568). The Supreme Court may limit review by granting certiorari only as to some of the questions set out in the petition (E.G., Dennis, v. U.S. 1951, 71 S. Ct. 857, 871, 341 U.S. 494, 516, 95 L. Ed. 1137; Beck v. Washington, 1962, 82 S. Ct. 955, 369 U.S. 541, 554, 8 L. Ed. 2d 98. See also Rice, The Limited Grant of Certiorari and the Justification of Judicial Review, 1975 Wis. L. Rev. 343; 16 Wright, Miller & Cooper, Jurisdiction Sec. 4004, pp. 516-518).

The Supreme Court cannot decide questions of fact, thus the compliance with legal and constitutional procedure in the trial courts is essential to the determination of and arrival at the facts — i.e. what the facts really and truthfully are. Thus the violations of the Constitutional Rights of FTigers Oil to due process and

equal protection are very important for the Supreme Court to rule upon in order to terminate the illegal and unconstitutional manifold actuations of the PTO/TTAB, amounting to corruption. Thus, if the Supreme Court does not stop these illegal, unconstitutional and anomalous acts and failures to act of the PTO/TTAB/Commissioner, the PTO/TTAB will be left as a free wheeling, devil-may-care Federal Court always safe in the thought and knowledge that the Supreme Court cannot review its determination of what 'facts' are and what are the 'facts' in any given case/controversy. The only control here is through enforcement of the Feder. Rules of Civ. Pro. with reasonable strictness, uniformly, consistently, impartially together with the constitutional requirements of due process and equal protection absolutely and definitively, which per force includes the enforcement of the specifics of the Trademark Law — not after the damage has been done by the PTO/TTAB but before the High-Flying, safe and secure PTO/TTAB *can wreck havoc on the facts and the record.*

The Supreme Court has said: "THE DUTY OF THIS COURT TO MAKE ITS OWN INDEPENDENT EXAMINATION OF THE RECORD WHEN FEDERAL CONSTITUTIONAL DEPRIVATIONS ARE ALLEGED IS CLEAR, RESTING, AS IT DOES, ON OUR SOLEMN RESPONSIBILITY FOR MAINTAINING THE CONSTITUTION INVIOLATE." (*Napue v. Illinois*, 1959, 79 *S. Ct.* 1173, 1178, 360 *U.S.* 264, 271, 3 *L. Ed.* 2*d* 1217).

The Supreme Court, like all other courts established by Congress, is AUTHORIZED TO ISSUE "ALL WRITS NECESSARY OR APPROPRIATE IN AID OF THEIR RESPECTIVE JURISDICTIONS AND AGREEABLE TO THE USAGES AND PRINCIPLES OF LAW." (28 *U.S.C.A. Sec.* 1651 (*a*). *See* 16 *Wright, Miller & Cooper, Jurisdiction Sec.* 4005). When a case is within the appellate jurisdiction of the Supreme Court, it may issue the Common Law Writs of Mandamus, Prohibition,

and Certiorari in aid of the appellate jurisdiction that might otherwise be defeated by the unauthorized action of the court below (McClellan v. Carland, 1910, 30 S.Ct. 501, 503, 217 U.S. 268, 280, 54 L. Ed. 782).

15 U.S. Code Sec. 1119 states:

> "In any action involving a registered mark the court may determine the right to registration, order the cancellation of registrations, in whole or in part, restore cancelled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Commissioner, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby. As amended Jan. 2, 1975, Pub. L. 93-596, Sec 1, 88 Stat. 1949."

The CAFC had, as does the Supreme Court now have, jurisdiction over the relief on Appeal No. 84-602 for declaratory rulings, and over the Petition for Certiorari/ Mandamus / Prohibition / Declaratory Relief (unnumbered but joined with 84-602 in the Final Decision) subject of this above-entitled Petition. See 28 U.S. Code Sec. 2201 and 2202.

The Supreme Court or any federal court, has jurisdiction over the matter of false designation, false description or false pretenses by the Flying Tiger Line Inc. for immediate declaratory relief pursuant to 15 U.S.C. 1125. The Flying Tiger Line not being the 'Flying Tigers' and therefore not having, on the face of it, any legal or moral right to use those words or mark or name — which obviously belongs to the Flying Tigers International, the Flying Tigers Oil Company, Inc., of Phoenix, Arizona, and the Flying Tigers Party (a political organization).

The actuations and failures to act, in the form of orders, notices, or otherwise, of the PTO/Commissioner/

TTAB are appealable on grounds of gross abuse of discretion even if they can or may be labeled interlocutory, and in many instances without any discretion whatsoever. See 15 U.S. Code Sec. 1071 Re E.C. Atkins & Co., 1907, 29 App. D.C.385, error dismissed 29 S.Ct. 390, 212 U.S. 285, 53 L.Ed. 515. In the matters presented here and in the CAFC for many violations of due process and equal protection, there is obviously gross abuse of discretion, and therefore appealable and immediately reviewable by the Supreme Court and the CAFC.

If the Commissioner of Patents and Trakemarks refuses 'Registration' directly or indirectly, that Action or Order is appealable immediately. The same applies to the denial of an Opposition, even at the outset. Pro contra, if the Commissioner/PTO/TTAB gives due course to an Opposition 'FILED OUT OF TIME, AND THUS BARRED BY STATUTE that fact and condiTION, and violation of Statute Law, alone is immediately appealable either by direct appeal or by Writ of Certiorari/Mandamus/Prohibition/Declaratory Relief. Where a government office or official so abuses his position so as to actually violate the law an extraordinary writ is not only justifiable but mandatory, and the proper public service for the federal court to render. A claim that such an extraordinary writ circumvents a trial is erroneous and reverse logic. The correct logic is that no trial is legally possible because it, a trial, is in violation of the Statute, i.e. the filing of an Opposition after the 30-day period from publication has expired bars the Opposition and thus a trial of it. (Re Mark Gross, 1905, 26 App. D. C. 101).

> "Where Commissioner of Patents sustained opposition and denied registration of trade-mark, district court had jurisdiction to entertain action against Commissioner alone to compel registration of the trade-mark. (Speed Products Co. v. Tinnerman Products, C.A.D.C. 1948, 171 F. 2d 727." From U.S.

Code Annotated Page 151, 15 U.S.C. Sec. 1071.

and:

"United States courts in exercising appellate jurisdiction in trademark registration proceedings are as part of the machinery of the patent office to determine the registrability of proposed trademarks. Merrick v. Sharpe & Dohne, C.A. Ill. 1951, 185 F. 2d 713, certiorari denied 71 S. Ct. 573, 35 U.S. 954, 95 L. Ed. 687." U.S. Annotated, page 151, 15 U.S Code Sec. 1071.

In Monroe V. Pape 365 U.S. 167 (1961) the Supreme Court held that exhaustion of state judicial remedies is not a condition precedent to a request for federal relief under Section 1983. Justice Douglas concluded that it was irrelevant whether State Law, if properly enforced, would provide Plaintiffs with a remedy, and said "The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." Id at 183. The majority in Huffman claimed its decision in no way undermined Monroe. The principles involved can be logically extended to Petitions for Certiorari and Appeals of Orders and Acts by federal agencies and officials charged with being violative of Constitutional Rights, Statute Law and the Fed. Rules of Civ. Pro.

5 U.S. Code Sec.. 706 (1976) provides in part: "To the extent necessary to decision and when presented, the reviewing court shall . . . (2) hold unlawful and set aside agency action, findings and conclusions found to be — (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The "Death Knell Doctrine", originating with the Second Circuit in Elsen V. Carlisle & Jacqueline (Eisen I) 370 F. 2d 119, 12021 (2d Cir. 1966), cert. denied, 386 U.S. 1035 (1967) provides for appellate review of

district court orders that are not technically final but that have the practical effect of ending a lawsuit. In an order decertifying a class action the 8th Circuit Court of Appeals concluded that the order decertifying the class was therefore reviewable on the grounds that such an order had the character of a final order and therefore appealable. The same character applies to the Order/Notice of the PTO/TTAB giving due course to the Opposition that is barred by statute for having been filed after the 30-day period from publication of trademark without any written request for extension of time.

In Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949) the court ruled that appeals from conclusive orders touching matters that are collateral to the merits of the suit when failure to allow a appeal *could result in irreparable injury from an erroneous ruling can be appealed.* Obviously FTigers Oil and each and every one of its stockholders and officers would be irreparable injured by a trial of an opposition to registration of a trademark that had already been approved, published and processed and passed the 30-day period from date of publication for filing of oppositions thereto — especially so since such trial and opposition are barred by Statute Law. The Death Knell Doctrine enunciated in Eisen I is distinct from the Collateral Order Rule of Cohen. Whereas the Collateral Order Rule allows appellate consideration of orders that are clearly interlocutory the Death Knell Doctrine interprets the finally requirement to allow appellate consideration of orders that, in effect make a decision in favor of one party before final decision is issued inevitable. See Redish, the Pragmatic approach to Appealability in the Federal Courts, 75 Colum. L. Rev. 89, 94 (1975).

28 U.S. Code Sec. 1292 (a) (1), The Judicial Code, permits appeals from interlocutory district court orders granting, continuing, modifying, refusing, or dissolving injunctions. The request for Mandamus/Prohibition both in Appeal 84-602 and in FTigers Oil/Flying Tigers In-

ternational/Robert Zlomke/Morton F. Meads Petition for Mandamus/Prohibition falls within this rule and justifies jurisdiction of the CAFC and the Supreme Court. The PTO/TTAB, equivalent to the district court, refused injunctive principle against trial of Opposition in violation of Statute Law and is therefore appealable, as is the refusal of CAFC to grant the same type injunctive relief through Writ of Mandamus/Prohibition/Declaratory Relief.

THE SUPREME COURT EXPLAINED IN 437 U.S. AT 480 (*quoting Baltimore Contractors, Inc. v. Bodinger* 348 *U.S.* 176, 181 (1955) *that section* 1292 (a) (1) exception to the policy against piece meal appeals for orders respecting injunctive relief "IS A NARROW ONE AND IS KEYED TO THE 'NEED TO PERMIT LITIGANTS TO EFFECTUALLY CHALLENGE INTERLOCUTORY ORDERS OF SERIOUS, PERHAPS IRREPARABLE CONSEQUENCE' ". Trial of an Opposition that is patently illegal for having been filed beyond the 30-day period from publication set by Statute Law obviously has serious, perhaps irreparable consequence.

The Court of Appeals of the Second Circuit held that because Section 1292(a)(1) permits Appellate Review of the Order denying a Preliminary Injunction, the court in its discretion could exercise pendent jurisdiction over the order denying class status. 595 F. 2d 1231 (2d Cir., vacated and remanded on other grounds sub nom. Lombard v. Marcera, 99 S. Ct. 2833 (1979). Injunctive relief is part of the character of mandamus and prohibition, and considered a second class, lower level and quite often Temporary Mandamus/Prohibition. When an injunction is made permanent it is in effect a Mandamus/Prohibition type writ.

28 U.S. Code Sec. 1651 (a) provides for mandamus where a district judge clearly abuses his discretionary power — which is precisely the case in the PTO/TTAB, i.e. the case at bar wherein the latter tribunal and federal agency determinedly violated Statute Law in

allowing an Opposition for trial that is barred for having been filed out of time. The PTO/Commissioner/TTAB has no discretionary power to give due course to such opposition filed out of time after the 30-day period from publication for filing with no written request for extension having been filed.

The question of whether an 'Opposition to Registration' in the PTO, is filed out of time, i.e. after the 30-day period from date of publication, is not new for the federal courts. Neither is the obligation of the court to issue Summary Extraordinary Writ where the details are not disputed. The duty of the Supreme Court to avoid unnecessary trials and judicial expenses cannot be refuted.

The Trademark Act of 1946 as amended reads, Sec. 13:

> "Opposition to registration of marks on the principal register
>
> "Any Person who believes that he would be damaged by the registration of a mark upon the principal register may file a verified opposition within thirty days after publication — — — Upon written request prior to the expiration of the thirty day period, the time for filing opposition shall be extended * * *."

Thus, with the date of publication November 18, 1980, the 30-day period expires on December 17, 1980. Since no written request for extension was made see Certified List, Appendice 'M' of this Petition pp. xciii, the filing of Opposition on January 5, 1981 was obviously out of time, and therefore barred by Statute and outside the discretion of the Commissioner/PTO/TTAB.

The Trademark Rules of practice of the Patent and Trademark Office, excerpted portions being an Appendice

of this Petition 'K', pp. LI-LXVI, states further that a certificate of mailing is required for an Opposition, and we quote paragraph 1.8 thereof:

> "Certificate of mailing. (a) Except in the cases enumerated below, papers and fees required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if (1) they are addressed to the Commissioner of Patents and Trademarks, Washington, D. C. 20231, and deposited with the United States Postal Service with sufficient postage as first class mail PRIOR TO EXPIRATION OF THE SET PERIOD, AND (2) THEY ARE ACCOMPANIED BY A CERTIFICATE STATING THE DATE OF DEPOSIT (SEE FORM * * *."

In the present case no request for extension of time was ever filed by FTiger Line, and no certificate of mailing was ever filed showing the ostensible date of mailing the Opposition, which if disclosed might be further evidence against the FTiger Line. Please see Certified List, Appendice 'M' of this Petition for first documents filed, and the original Record requested to be elevated for the 'Receipt Stamp' of January 5, 1981 on the Opposition.

The Trademark Rules of Practice further state, Paragraph 2.148:

> "Commissioner may suspend certain rules. In an extraordinary situation, when justice requires *and no other party is injured thereby, any requirement of the rules not being a requirement of the statute* may be suspended or waived by the Commissioner."

In the present case the requirement for filing a written request for extension of time is part of the Statute therefore even by the Commissioner's 'own rule' he cannot suspend the statutory requirements setting the time

limit for filing Oppositions — and of course the Commissioner, nor even the court has the power to change the Statute, the Trademark Law. The rule on filing certificate of mailing is apparently enacted by the PTO with the concurrence of the Secretary of Commerce and published in the Federal Register and is therefore part of the Federal Regulations, therefore a part of the Law of the Land also, unless unconstitutional. However, if it be deemed only an internal rule and non statutory, said Rule provides that the Commissioner still cannot waive any nonstatutory condition or requirement if such waiver or suspension "*Injures Any Party*": "* * * and no other party is injured thereby * * *". In the present case, the Flying Tigers Oil, its Officers and all its Stockholders, one of which is Petitioner Robert Zlomke, are very much injured thereby. Therefore the acceptance or giving due course to the Opposition of FTiger Line filed out of time is patently illegal on the foregoing grounds; and additionally for violation of the due process and equal protection rights of the Flying Tigers Oil Company, Inc., its Officers and Stockholders, under the Constitution. Considering that a Contract has been entered into between the Commissioner/PTO and the Flying Tigers Oil Company, Inc. by the latter's application, the specifications of the Rules, the Trademark Law, and the payment of fees, a binding contract exists which the Flying Tigers Oil and its Stockholders have the right to expect the government to comply with, and not violate by extending favors to an Opposer in violation of Statutory Law and the Commissioner's own rules. Under these conditions and facts, the recourse of FTiger Line is to file a Petition for Cancellation of Registration, not an Opposition out of time, without request for extension, and without any certificate of mailing. Due process and equal protection under the Constitution mandate this procedure and action by the Commissioner/PTO/TTAB.

II—ERRONEOUS ACTIONS OF CAFC AND PTO/

TTAB AND JUSTIFICATION FOR IMMEDIATE CORRECTION BY SUPREME COURT AND CAFC.

A — No government office may conduct itself in such a way that it commands or supports or encourages or becomes involved in violation of the Constitutional Rights of a private party to due process and equal protection. This is a protection afforded to all entities by the Fourteenth Amendment. When such a party calls upon the State to provide it with the due process, equal protection of property and true name and identification against those, alone or together with the state (Commissioner of Patents and Trademarks and TTAB in this instance), who have taken, destroyed or impaired same, the State and the Courts are duty bound to provide the support and protection for those rights and true identification against anyone using or seeking a false identification, in this instance the Flying Tiger Line Inc. Failure to do so can only breed suspicion and distrust of the government office involved and consequently the government itself.

Here, the TTAB's involvement is extensive and its support marked for violation of due process and equal protection for FTigers Oil and its stockholders. To provide equal protection and due process the Commissioner and TTAB should have issued the Registration to FTigers Oil Co. because it was approved, completed, published; and within the Statutory Regulamentary Period, with no written request for extension of time, no Opposition was filed. Just as the Flying Tiger Line was treated for its applications so should the FTigers Oil also be treated. To extend the period for filing Opposition is a violation of the equal protection clause of the Constitution if the provision of the Law are not complied with (as in this case). To allow an extension without any written request and without any request in writing and without any certificate of mailing, even though it injures someone, is an even greater violation of the equal protection right of the FTigers Oil and

its stockholders, and give the benefits of those rights to an apparent adversary. The herein FTiger Line, which makes a triple violation of the equal protection clause in only one matter, and shows how such violation pyramid and increase at a geometric ratio until finally the injured party and deprived party is overwhelmed as the drones of government pile on, each gaining courage and confidence from the attacks of other drones on the 'Due Process' and 'Equal Protection' rights of the injured and deprived party.

This is more than just a mere detail. For the Flying Tigers Oil and its stockholders have gained a procedural and property right which should have been respected as much as the TTAB and FTiger Line expect their to be respected. This procedural right has to do with burden of proof. This advantage is a property right of Flying Tigers Oil which neither the FTiger Line nor the Commissioner/PTO/TTAB can legally and constitutionally take, destroy, disregard or transfer by any means to the FTiger Line.

B — The Opposition/Complaint states no cause of action because the allegation of 'damage' to the opposer must state 'how' it will be damaged. There is no clear and meaningful statement as to how FTiger Line would be 'damaged'.

The Trademark Rules of Practice Paragraph 2.104 states:

> "Contents of opposition. The opposition must set forth a short and plain statement *showing how* the opposer would be damaged by the registration of the opposed mark and state the grounds for opposition. A duplicate copy of the opposition including exhibits shall be filed."

There is no statement as to 'how' the damage would occur or come about. If the statement that FTiger Line under oath was never and never has been in the oil

and gas business and is not dealing in oil and gas as a business is to be taken seriously, then there is no conflict in the business of Flying Tiger Line and FTigers Oil, therefore, the FTiger Line cannot be damaged and cannot claim to being damaged by the various activities of the Flying Tigers Oil Co. in the oil field. Absent this condition, what is left? the FTigers Line has a registration for 'Flying Tigers' in the classification of Air Transportation Services (Class No. 105) and no other. The application of the FTigers Oil is for an entirely different class, and field of activity or business. Therefore, the registration of FTiger Line, obtained without the knowledge of the Flying Tigers Oil or Flying Tigers International or Robert Zlomke and Morton F. Meads and obtained through misrepresentation and fraud does not cover the field and classification of Oil business or any aspect thereof, an thus on its face the Opposer FTiger Line cannot be damaged in law or fact, and thus on its face there is no cause of action and said Opposition shoud not have been given due course by the PTO/TTAB for this additional reason.

Within the meaning of the law, but excluding Common Law Ownership, which is possessed exclusively by the Flying Tigers Oil Company, the Flying Tigers International and the Flying Tigers Party, an entity cannot be damaged by an activity in a different class of Business or Commerce. For this reason the FTiger Line had no legal or factual basis for claiming that it would be damaged. The law intends that there would be no damage to a party outside the class or business of the first party unless the mark or name is owned in common law and is the special and true identity of an entity, as is the name and mark 'Flying Tigers' for the Flying Tigers Oil Co. Inc., and the Flying Tigers International, of which Robert Zlomke is stockholder of the former and a member of the latter, and Morton F. Meads an officer and member of the latter. Court decisions have been unanimous that there is no infringement outside the class of a trademark owner (unless

common law ownership and false identification is involved), and thus the PTO/ TTAB, knowing this, and the facts of the application of FTigers Oil for a totally different class of goods or services, and knowing the class registered by FTiger Line, PTO/TTAB/Commissioner knew then and knows now that FTiger Line could not legally or actually be damaged on the face of the Opposition, application of FTigers Oil and application of FTiger Line. What is more the Opposer FTiger Line never attached any exhibits as required by the rules and the law — whereas the FTigers Oil attached exhibits to his Answer with Affirmative Defenses of Cancellation of Registrations of FTiger Line as required by the Trademark Law — but despite this the PTO/TTAB ridicules the filing of exhibits by FTigers Oil and defends the nonfiling thereof by FTiger Line, which is an example of another violation of due process and equal protection.

C — Many of the actuations and orders of the Commissioner/TTAB/PTO and the CAFC are contrary to prior rulings on the same or similar question, and therefore deserve the cognizance of the Supreme Court to correct the Federal Office and Federal Court involved.

For example, the question of admitting an Opposition filed out of time and proceeding with trial and allowing introduction of new issues not contained in an Opposition, and admitting Opposition without any exhibits attached thereto but allowing presentation of exhibits at any time; and allowing inroduction of new issues through a sham Motion for Summary Judgment that were never included in an Opposition; and allowing Oppositions and affidavits with defective verifications. On these questions the following decisions are applicable and should be reinforced by a current decision of the Supreme Court:

"Opposition to Registration * * *. Time to file * * *

Congress having specifically provided for time within which an Opposition to granting of registration may be filed, it would not be proper to construe patent office rule to permit, in effect, commencement of opposition at later time. Wilson v. Delaunay, 1957, 245 F. 2d 877, 44 C.C.P.A. Patents 1019." 15 U.S. Code Sec. 1063 Annotation; and:

"Opposition to Registration * * * Time to File * * * Former Section 86 of this Title providing that person who believes he would be damaged by registration of trademark may oppose registration by filing Notice of Opposition stating grounds therefore in Patent Office within 30 days after publication of mark PRECLUDES ANY AMENDMENT SETTING UP NEW GROUNDS OF OPPOSITION IF FILED MORE THAN 30 DAYS AFTER PUBLICATION OF MARK SOUGHT TO BE REGISTERED. *School Mfg. Co. v. Simon*, 1949, 173 F. 2d 245, 36 C.C.P.A. Patents 939." 15 U.S. Code Sec. 1063 Annotated.

"Where an Opposition is not properly verified by the person filing it, and an instrument which is practically a new Opposition, properly verified, is filed after the expiration of such period, *it is filed too late.* Hall's Safe Co. v. Herring-Hall-Marvin Safe Co., 1908, 31 App. D.C. 490." 15 U.S. Code Sec. 1063 Annotated.

"Commissioner of Patents has duty and jurisdiction to determine in First Instance Sufficiency of paper filed as Opposition. U.S. ex rel. Symons v. Roberts, 1929, 30 F. 2d 566 App. D. C. 324". 15 U.S. Code Sec. 1963 Annotated.

"WHERE THE "PLYMOLD 'CORPORATION' WAS A CORPORATE ENTITY PRIOR TO THE DATE UPON WHICH COMPETITOR APPLIED FOR REGISTRATION OF THE MARK "PLYMOLD", APPLICANT WAS NOT ENTITLED TO EXCLU-

SIVE USE OF ITS MARK AT THE DATE THEREOF, AND REGISTRATION WAS INADVERTANTLY GRANTED, AND HENCE THE PLYMOLD CORPORATION WAS ENTITLED TO CANCELLATION OF REGISTRATION IN PROCEEDINGS BROUGHT FOR THAT PURPOSE. *Haskelite Mfg. Corp. v. Plymold Corp.*, 1947, 162 *F. 2d* 464, 34 *C.C.P.A. Patents* 1172." 15 *U.S. Code Sec.* 1064 *Annotated.*

"WHERE VERIFIED ALLEGATION OF USE OF TRADE-MARK IN APPLICATION FOR REGISTRATION OF TRADE-MARK WAS NOT CHALLENGED IN NOTICE OF OPPOSITION, APPLICANT WAS NOT REQUIRED TO FURNISH FURTHER EVIDENCE OF USE. *Huntingson Laboratories v. Onyx Oil & Chemical Co. Cust.* & Pat. App. 1948, 165 F. 2d 454." 15 U.S.C.A. Sec. 1067.

"Where a party whose application for a trademark was rejected, sought, more than two years afterwards, to amend his application, so as to bring it under the provisions of the new law, but the Commissioner held that the application was not pending within the meaning of former Section 89 of this title, his decision virtually refused registration, and was appealable. In re Mark Cross Co., 1905, 26 App. D.C. 101." 15 U.S.C.A. Sec. 1071.

D — The Flying Tiger Line failed and refused repeatedly to answer in any meaningful way, much less under oath, the following averments in the Answer with Affirmative Defenses which the PTO/TTAB illegally forced the Flying Tigers Oil Co. Inc. to file:

(1) Paragraph 2 of Answer WADofCR; WADofCR meaning with Affirmative Defenses of Cancellation of Registrations of Flying Tiger Line;

(2) All allegations in Paragraph 4 of Answer WADorCR;

(3) All affirmative averments of fact in paragraph 5 (a), (b) and (c);

(4) All of the averments of fact in paragraph 6 (but excluding the denials by Applicant of specific allegations of the Opposer in its Notice of Opposition);

(5) All of the averments of fact in paragraph 7 (but excluding the denials by Applicant of specific allegations of the Opposer in its Notice of Opposition);

(6) All averments of fact in paragraph 8 (but excluding the denials by Applicant of specific allegations of the Opposer in its Notice of Opposition) except for a denial that it, the Opposer, obtained registration of the subject marks by fraud (which is a conclusion of fact);

(7) All averments in paragraphs 9, 10, 11, 12, 13, 14, 15, 16, and 17;

(8) The averment in paragraph 18 that "* * * and documents filed in the various applications of the Flying Tiger Line in the Office of Patents and Trademarks are contradictory and evidence against the allegations that the same applicant made in other applications. * * *"

(9) All averments in paragraph 19;

(10) The averments that applicant had "* * * regular, long time and continuous use of the mark Flying Tigers and graphic representation of a tiger head, * * *" in paragraph 20;

(11) All averments in paragraphs 21, 22, 23, 25, 26, 28 (A) and (I).

The 'Averments of Fact' which must be answered specifically under the law (Rule 8 (d) F.R. Civ. Pro.) are the basis and foundation of claims of Ownership, Fraud, Damage, Laches, Acquiscence, Estoppel(Common Law Rights, Misrepresentation, Distinctiveness, False Designation. If the facts of foundation are admitted, then the conclusion to be made from those admissions of facts by a reasonable and impartial mind is mandatory; and denials of the grounds or some of them without denial of the averments of facts upon which those grounds are laid is meaningless, unprobative and only pro forma. The claim of the Opposer that denial of 'grounds' is a denial of Averments of Fact is erroneous in law, fact and logic. It is the opposite. The admission of the Averments of Facts through failure to deny constitutes an admission of the conclusion and the grounds. Thus the aforecited Admissions of Averments of Fact by failure of FTiger Line to deny them specifically in response to Affirmative Defenses proves the claims of ownership by FTigers Oil and Flying Tigers International, fraud by FTiger Line, Laches and Estoppel against FTiger Line, Acquiescence by FTigers Line, Common Law, Right for FTigers Oil, Damage to FTigers Oil; Long, Regular and Continuous Use by FTigers Oil, No Damage to FTiger Line, False Designation by FTiger Line, Misrepresentation and False Pretenses by FTiger Line, Distinctiveness of Marks of FTigers Oil, that Equity is in favor of FTigers Oil and Flying Tigers International, and FTiger Line and FTigers Oil are in nonconflicting fields.

In sum, the response to Affirmative Defenses does not deny specifically or meaningfully most of the allegations of fact in the Answer with Affirmative Defenses of Cancellation of Registrations of FTiger Line obtained by fraud and perjury, which failure to deny constitutes admissions of major, basic and all encompassing facts that destroy any basis for FTiger Line's Opposition to Registration of FTigers Oil's mark 'Flying Tigers', and

any basis for the registration of marks under 999,837 and 969,394 by FTiger Line. And, any denials that were made by FTiger Line *were not under oath* as required by the Trademark Law and Rules of Practice for 'Response, Answer or Opposition to Petition for Cancellation of Registrations'. Tolerance of this condition by the Commissioner/PTO/TTAB is illegal discrimination resulting in the deprivation of the Constitutional Rights of Flying Tigers Oil and its stockholders and officers to due process and equal protection of the laws.

In trademark and Patent cases the Rules on Specific Denials and Admissions by Failure to Deny are especially important and meaningful because dates and types of use *can and should be subject of concrete averments under oath — which must consequently be specifically denied under oath.* Such procedure and condition crystalizes the Issues, reduces Litigation and Expense, and Promotes the Arrival at Justice.

Failing to anwer constitutes and admission that those Averments are true, and the truth of which nullifies any basis for Opposition to Registration of the marks of the FTigers Oil and mandates the immediate cancellation of registrations of the FTigers Line Inc.

In addition, both the Flying Tigers International and the Flying Tigers Oil Co. Inc. have prior registrations in a foreign country, which prior date of registration is covered by the Lanham Act, See 15 U.S. Code Secs. 126 (d) (1), (2) and Sec. 1127 (1970).

Appendice 'N' of this Petition pp. xciii-cx lists Quotations from citations indicating that the higher federal courts have the obligation to watchdog federal agencies and lower courts on procedural due process and equal protection, especially Nos. 1 to 12 inclusive.

Case Citations in Appendice 'N', pp. xciii-cx, show that higher federal courts have jurisdiction of Acts and

Orders involving violations of due process, and equal protection, the Fed. Rules Civ. Proc., and the Trademark Law, particularly Nos. 13 to 26 inclusive.

III — RULE MAKING: VIOLATIONS OF RIGHTS OF PARTIES.

A — Case Citations in Appendice 'N' pp xciii-cx, show that higher federal courts particularly the CAFC has no right to make a rule, or implement one in a manner, that would deprive a party of a substantive right, as prohibited by 28 U.S. Code Sec. 2072. In this case, with countless questions, violations of due process and equal protection, and the Rules of Civil Procedure, the argument therein must take up a great deal of space. Thus if the page limitation of the CAFC is invoked literally the FTigers Oil must throw out its entire argument or most of the questions presented, or a large portion of both — when even as they are, they, in the CAFC Appeals, do not include all the questions and issues involved, nor the argument on each issue or question. This condition deprives FTigers Oil and its stockholders and officers of its substantive right to 'Argue' its case/controversy. This the CAFC's rule, and its application thereof, against FTigers Oil forcing the latter to reduce its Brief from 145 pages to 53 pages deprives FTigers Oil and its stockholders of a substantive right — i.e. to present an argument of every issue or question. See Cases Nos. 27 to 45 inclusive in Appendice 'N' of this Petition, pp. xciii-cx.

The CAFC violated the substantive rights of the FTigers Oil protected by 28 U.S. Code Secs. 2071, 2072 and 2073 by preventing FTigers Oil, and consequently its stockholders, from presenting a meaningful Argument of its Appeal and herein Petitioners Petition for Certiorari / Mandamus/Prohibition/Declaratory Relief. This was done by forcing FTigers Oil to strike out 93 pages of its Brief. The Officers and Stockholders had the

choice of striking out almost all of the questions presented or its Argument. Both could not be accommodated by the Rules of CAFC or the way that they were applied. In this regard no opportunity was given by CAFC to the public to oppose or comment upon the said rules before promulgation, thus denying Petitioners of due process, and are therefore null and void — especially as applied by CAFC in Appeal 84-602 from the PTO/TTAB. The Supreme Court concluded in an applicable case that "Additional procedures may be required to afford the aggrieved individuals due process." In adjudicative-type Rule making that primarily affects only a few individuals. See 435 U.S. at 542 see Londoner v. Denver, 210 U.S. 373 (1908) (hearing required prior to assessment against individual landowner's property for benefit resulting from paving of street; (quoting Florida East Coast Ry., 410 U.S. at 242, 245 quoting Bi-Metallic. See Gilbert v. U.S. 1900, 35 Ct. Cl. 573; Hecker v. Fowler, N.Y. 1865, 2 Wall, 123, 17 L. Ed. 759; Guaranty Trust Co. of N.Y. v. York, N.Y. 1945, 65 S. Ct. 1464, 326 U.S. 99, 89 L. Ed. 2079, 160 A. L.R. 1231, rehearing denied 66 S. Ct. 7, 326 U.S. 806, 90 L. Ed. 491; American Graphophone Co. v. National Phonograph Co. C.C. N.Y. 1904, 127 F. 349; American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co. D.C. N.Y. 1932, 1 F. Supp. 820; Mutual Building Fund Soc. & Dollar Sav. Bank v. Bossieux, D.C. Va. 1877, Fed. Case No. 9,977; Abbott v. Brown, Fla. 1916, 36 S. Ct. 689, 241 U.S. 606, 60 L. Ed. 1199; Clymer v. U.S., C.C.A. Colo 1930, 38 F. 2d 581; Crescent Wharf & Warehouse Co. v. Pillsbury, C.A. Cal. 1958, 259 F. 2d 850; Bendix Aviation Corp. v. Glass, C.A. Pa. 1952, 195 F. 2d 267, 38 A.L.R. 2d 356; Hartley Pen Co. v. Lindy Pen Co. D.C. Cal. 1954, 16 F.R.D. 141; Bank of United States v. White, Ohio 1834, 33 U.S. 262, 8 L. Ed. 938; The Selt, D.C. Wis. 1872, 3 Biss. 344, 21 Fed. Case No. 12,649; Barron v. Locke, D.C. 1850, 2 Fed. Case No. 1,054; I.S. v. Sherwood, N.Y. 1941, 61 S. Ct. 767, 312 U.S. 584, 85 L. Ed. 1058. See, also, Wyker v. Willinam, D.C. Ala. 1944, 55 F. Supp. 105; Lowe v. U.S. D.C.N.J. 1941, 37 F. Supp. 817;

Fontenot v. Roach, D.C. Tenn. 1954, 120 F. Supp. 788; Melekov v. Collins, D.C. Cal. 1939, 30 F. Supp. 159.

28 U.S. Code Sec. 2072 reads in part: "* * *. Such rules shall not *abridge, enlarge or modify any substantive right* * * *."

IV — DENIAL BY CAFC OF SUPERVISORY AUTHORITY OR JURISDICTION.

The Decision of the CAFC, Appendice 'C' of this Petition, pp. XXIV-XXVI, state that the CAFC does not have any supervisory jurisdiction over the PTO/TTAB/Commissioner. Federal Case Law indicates otherwise. *See John Morrell Ct. v. Doyle, C.C.A.* 111, 1938, 97 *F.* 2d 232, *certiorari denied* 59 *S. Ct.* 146, 305 *U.S.* 643, 83 *L. Ed.* 415. *Quoting from U.S.C.A.* "THE COURT OF CUSTOMS AND PATENT APPEALS HAS JURISDICTION WITH REFERENCE TO TRADEMARKS ONLY TO REVIEW QUESTIONS APPEALED FROM COMMISSIONER AND TO GIVE OFFICIAL DIRECTIONS WITH REFERENCE THERETO. * * *."

V — COMPLETION OF EVIDENCE IN CHIEF OF FTIGER LINE IN PTO/TTAB.

In this case and that before the CAFC the FTiger Line cannot claim that it has much to do in the PTO/TTAB, and would somehow be deprived by rulings against it by the CAFC or the Supreme Court — because it has completed its Evidence in Chief in the lower court and presented no witnesses and only the three registrations that it obtained by perjury and fraud and without provable use prior to date of application, plus one illegible, unsigned and unfathomable document, all of which were made Appendices in Appeal 84-602 and herein Petitioners Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief in the CAFC. Therefore the FTiger Line cannot complain that they were not given a chance because everything that they have submitted

was before the CAFC and now before the Supreme Court. Thus it has full the process and equal protection as against deprivation of these to the FTigers Oil and its stockholders and officers. Consequently, even with this advanced stage and advantages it still cannot overcome the obvious defects, shortcomings and illegal conditions subject of this Petition — and thus this Court can rule fully on the Questions and Issues presented herein and in the CAFC without fear that the FTiger Line is being deprived of a day in court. It has had that day and much more and still it has failed. Failure to deny the Averments in the Answer with Affirmative Defenses constitute Default and Admissions of the allegations of fraud and perjury against FTiger Line. The FTiger line should be held to account.

VI — FALSE DESIGNATION AND DECEPTION OF THE PUBLIC.

The Flying Tiger Line Inc., previously the National Skytrain Corporation, is deceiving the public with its false designation and use (after application for trademark) of the mark of the Flying Tigers International and the Flying Tigers Oil Co. Inc. 'Flying Tigers' and 'Tiger Head Logo'. FTiger Line is pyramiding strength for its false designation by hiring public and political figures for the purpose also of warning away any who might want to challenge their false identity. This has extended to the deception of Ex-President Ford who has been hired as a Director of either the FTiger Line or an affiliated Company. This condition points up the imperative need to expose and put a stop to the misrepresentation and false pretenses of the National Skytrain Corporation (now FTiger Line) so that the public will not be deceived and injured further; and so the members of the Flying Tigers International, among whom are Robert Zlomke and Morton F. Meads, and the stockholders of the Flying Tigers Oil Co. Inc. will not be damaged further.

VII — REGISTRATION IN FOREIGN COUNTRIES.

The Republic of Morac-Songharati-Meads is a legally existing and operating nation under International Law, and can trace its history back for more than one hundred years starting with the 'Territory of Captain James George Mead' which makes it one of the oldest independent nations in Asia. It has a territory, a people (though small) and an operating government; and which four aggressor Asian countries are trying to destroy. It has declared war on the Peoples Republic of Vietnam. It has the legal and constitutional power and authority to issue registrations of patents, trademarks and service marks. Membership in the United Nations is not a condition of nationhood, nor is the support of the United States State Department a condition precedent to national sovereignty.

VIII — ATTACKS ON FILIPINO COUNSEL BY FTIGERS OIL'S AMERICAN COUNSEL.

The counsel of the FTiger Line has made attacks on the counsels of the FTigers Oil, most of them subtle and sophisticated, but actually a mere disguise to distract attention from the many illegal and/or unethical acts of the FTiger Line and/or its counsel and those of the PTO/TTAB for the benefit of the FTiger Line. These attacks can also be considered as discrimination against Filipino counsel under the color of 'professionalism' and to try to defeat the FTigers Oil, its stockholders and officers, and the Flying Tigers International by depriving them of counsel, especially counsel who knows the cases and history and cannot be intimidated or bamboozled by FTiger Line's counsel. In this Petition to the Supreme Court opposing counsel will probably repeat their attacks because they are in the United States and expect special and favorable treatment. Their system is an attempt to make it appear that Filipino counsel is inferior and by extension that the client, FTigers

Oil, is inferior or defective, or their averments and claims are inferior or unworthy. While doing this FTiger Line's counsels are making serious misrepresentations and false statements, which are duly challenged and exposed with documents (Appendices in CAFC Appeal 84-602). The CAFC, instead of placing sincerity and truthfulness as the most important elements of any legal or judicial standard, supported American counsel of FTiger Line against Filipino counsel of FTigers Oil in allegations of 'unconciseness' and 'emotionalism' in essence. It is not believed that such an inverse standard exists in the U.S. Judiciary and therefore the CAFC has made a wrong application or determination due to favoritism for American counsel. The CAFC did nothing about the charges of untruthfulness by American counsel, which the latter did not deny. See Appendice 'MM' which is the entire appendix to the Reply Brief of the FTigers Oil in 84-602 in CAFC regarding a particular false statement of American counsel that the case in PTO/TTAB was only in the discovery stage. Another false statement by American counsel is that the mark applied for by FTigers Oil is 'Flying Tigers Oil Co. Inc.'. Yet the CAFC is not interested in charges of untruthfulness. The Philippine Government and the Philippines Supreme Court allows American lawyers to practice in the Philippines without examination, and permanently, on the presumption that the United States courts does the same on a basis of reciprocity. The CAFC only allowed Pro Hac Vice representation and then killed that in its final Decision, Appendice 'C' of this Petition, pp. XXIV-XXXVIII, the Philippine courts have never treated any American counsel in the manner that the CAFC has treated Atty. A. C. Soriano In-House Counsel of FTigers Oil. This treatment was induced by the heavy sophisticated pleading of American counsel for FTiger Line, bordering on intimidation discrimination. This issue should be resolved by the Supreme Court, in particular whether the CAFC is allowed to place 'unconciseness' and 'emotionalism' assuming both to be present as more important and more serious criteria in

setting a court standard than the criterion of 'truthfulness and 'sincerity'. The FTigers Oil and its In-House Filipino counsel may have also been punished by CAFC (nee Court of Customs and Patent Appeals) for bringing bad news to it about its 'ward or stepchild', the PTO/TTAB.

None of the problems herein would exist if the Supreme Court would set down clearly and categorically a determination of what the public and parties and counsels have the right to receive and expect from the federal courts, such as the issuance of a Judicial Bill of Rights, to wit:

IX — JUDICIAL BILL OF RIGHTS TO SIMPLIFY PROCEEDINGS.

HEADS JUDICIAL BILL OF RIGHTS

Whereas a government by judiciary is the most efficient and just and democratic form of government, the following Rights should be proclaimed by the Supreme Court or the Congress of the United States of America.

1. That the Constitution of the United States guarantees every citizen the right to petition his government for redress of grievances, which per force includes the judicial system, with the Supreme Court as determiner of last resort.

2. That therefore all questions, problems, cases, controversies, issues are reviewable by the U.S. Supreme Court ultimately on the merits.

3. That therefore everyone has access to the U.S. Supreme Court eventually providing any such question, matter, problem, case, controversy or issue has first been presented to a Federal Court of Appeals, and ruled upon or been refused adjudication.

4. That every Federal Court of Appeals is required

to rule on the merits of every question, issue, problem, matter, case or controversy presented to it providing it has first been presented to, or arisen in any lower federal court or federal government agency or office, or a State Supreme Court.

5. That issues, questions, problems, matters, cases or controversies include all constitutional questions, legal questions, conclusions of law, matters of fact where the fact or facts involved are not in question or are immaterial if they are in question, the determination of what a fact is or how it relates to the law and how the law related to it, the process of determining of what the facts are, the evaluation of the evidence as to what the facts are, and the review of the conclusion of what the properly established facts and law mean.

6. All persons who have passed any bar examination or been admitted to the bar of any country, city, state or Commonwealth of the United States are allowed to practice before any court or magistrate or government office in the United States; and any member of the bar of any foreign country is likewise allowed to practice before any court in the United States if that foreign country grants reciprocal rights to lawyers of the United States.

7. Any person may appear and represent himself in any matter before any court tribunal, office, agency or government in the United States, person meaning both natural and artificial, registered or unregistered, incorporated or unincorporated, and if a corporate body through any officer or member thereof.

8. Any party to any case or controversy may choose his/her/its own counsel, even if that counsel is not a member of any bar, if he/she/it executes a power of attorney authorizing such person to representative and act as counsel.

9. To obtain the aforecited right to access to the

courts, any party, natural or artificial, may apply to the aforecited federal courts at the proper time by filing one copy of a Petition, whether original or by appeal, stating his/her/its/their grievance or grievances, with or without legal representation, for determination of coverage by this Judicial Bill of Rights. The court applied to shall make an official determination either in the affirmative or negative, and if in the affirmative inform the petitioner/applicant/appellant of the number of copies that he/she/it/they must file, and to whom they must be furnished and indicate the number of pages for briefs that the grievance, as stated, indicates to be justified, without repetition in the Brief of anything included in the Petition.

10. All federal courts will resolve such petitions of grievances in the order filed without obligation to grant oral argument.

1. No federal judge or justice is permitted to sign any order or decision on such grievance unless he/she has read every page of such petition and opposition and briefs, and exhibits, and makes a certification in such order or decision that he/she has done so..

12. The Congress of the United States may review and overturn any order or decision of any federal court of the United States which thereupon becomes the law of the case and of the land.

13. All veterans of the armed forces of the United States have priority in the time of and order of consideration of Petitions for grievances over all non veterans, and within the veterans category only time of filing determines the order in which considered by the federal court. No fees or costs may be charged any veteran unless he is ajudged criminally liable.

14. Any court or party violating the foregoing rights is in contempt of thc Constitution of the United States and the U.S. Supreme Court.

15. Only one typewritten copy of any Complaint/Petition/Statement/Motion, Appeal need be filed with any federal court for effective action until due course is given thereto, subject to any subsequent requirements of the court subject thereto in regard to number of copies.

16. All allegations and Pleadings must be under oath and signed by parties and counsels so making, and numbered by pleading and paragraph.

17. All Allegations and Pleadings cited in 16 above must be answered specifically by Pleading Paragraph and Allegations under same type oath as covered by Allegations, or in the absence thereof be considered in default.

18. These rules if adopted by the Supreme Court apply throughout the Federal and State Judicial Systems.

All aspects of the foregoing Judicial Bill of Rights that need no Congressional or Constitutional Amendment are effective upon declaration by the Supreme Court. The Congress may give its support as is appropriate. The people may give their support and approval by any constitutional amendment.

The need to simplify proceedings and resolve broad legal issues for all time is essential to judicial economy, elimination of judicial red tape, and meeting Constitutional requirements to receive and rule meaningfully on petitions of grievance by the public.

X — MISCELLANEOUS

Petitioners adopt by reference all the questions presented in Appeal 84-602, Appendice 'B' of this Petition, pp. XXX and the Petition for Certiorari/Mandamus/Prohibition/Declaratory Relief joined therewith, and the

argument presented in the 145 page Brief in the CAFC in 84-602, and the Case Citations and Law References including Appendice 'N' of this Petition, pp. xciii-cx.

The use of the word 'use' in this Petition when applied to the Flying Tiger Line Inc. means only that the marks 'Flying Tigers' and 'Tiger Head Design Logo' were used by FTiger Line *after filing of application for registration.* The only name that it used before application was filed was 'Flying Tiger Line.'

Many of the questions presented are self explanatory and unless denied or disputed show in themselves respectively the violations of due process and equal protection provisions of the Constitution, the Federal Rules of Civil Procedure and the Trademark Law. Thus no argument is necessary for them. They address themselve directly to the moral, ethical and common sense of the court, and per force in themselves respectively, are grounds for action by the Supreme Court to correct, or terminate, after granting the applicable writs.

Appendice 'Y'

In the

Supreme Court of the United States

October Term, 1985

No. ————

Morton F. Meads, as International Commander of the Flying Tigers International, Robert Zlomke, as Officer and Small Stockholder of the Flying Tigers Oil Company, Inc., The Flying Tigers International and the Flying Tigers Oil Company, Inc., et al.,

Petitioners,

v.

United States Court of Appeals for the Federal Circuit, the Flying Tiger Line Inc., et al.,

Respondents.

ENTRY OF APPEARANCE

Notice is hereby given that Morton F. Meads hereby enters his appearance in the above entitled case for and in his own behalf, *Pro Se;* as does Robert Zlomke hereby enter his appearance in the above entitled case for and in his own behalf, *Pro Se;* as does the Flying Tigers International hereby enter its appearance in the above-entitled case for and in its own behalf, *Pro Se* with its International Commander Morton F. Meads signing all papers and documents and pleadings for the Flying Tigers International. For the convenience of the respondents all of the foregoing may be served with copies

of Orders, Decisions, Processes and Pleadings in the above-entitled case through the same address, as follows:

P. O. Box 1094 Manila, Philippines.

ROBERT ZLOMKE
Pro Se (For and In His Own Behalf)

MORTON F. MEADS
Pro Se (For and In His Own Behalf)

Flying Tigers International

By: Morton F. Meads
International Commander
Pro Se (For And In Its Own Behalf)

Date: January 4, 1985

Appendice 'Z'

In the
Supreme Court of the United States
October Term, 1985
No. ————

Morton F. Meads, as International Commander of the Flying Tigers International, Robert Zlomke, as Officer and Small Stockholder of the Flying Tigers Oil Company, Inc., The Flying Tigers International and the Flying Tigers Oil Company, Inc., et al.,

Petitioners,

v.

United States Court of Appeals for the Federal Circuit, the Flying Tiger Line Inc., et al.,

Respondents.

ENTRY OF APPEARANCE

Notice is hereby given that Vicente L. Santiago, Attorney at Law, Applicant for admission to the Bar of the United States Supreme Court and Alberto C. Soriano, Attorney at Law, Applicant for admission to the Bar of the United States Supreme Court hereby enter their respective appearances for the Flying Tigers Oil Co. Inc. Petitioner in the above-entitled case, with senior counsel to be served being the one that is admitted to the Bar of the United States Supreme Court First. All Orders, Resolutions, Pleadings, Decisions and

Processes may be served on the Flying Tiger Oil Company,, Inc. through either of the undersigned counsel at their respective addresses given below:

ALBERTO C. SORIANO
1050 Conception Street
Ermita, Manila
Philippines

VICENTE L. SANTIAGO
602 Roman R. Santos Bldg.
Plaza Goiti, Manila
Philippines

ALBERT C. SORIANO
Counsel for the Flying Tigers Oil Company, Inc.
1050 Concepcion Street, Ermita
Manila, Philippines

VICENTE L. SANTIAGO
Counsel for the Flying Tigers Oil Company, Inc.
602 Roman R. Santos Bldg., Plaza Goiti
Manila, Philippines

Dated: January 4, 1985

Appendice 'AA'

In the
Supreme Court of the United States
October Term, 1985
No. ————

Morton F. Meads, as International Commander of the Flying Tigers International, Robert Zlomke, as Officer and Small Stockholder of the Flying Tigers Oil Company, Inc., The Flying Tigers International and the Flying Tigers Oil Company, Inc. et al.,

Petitioners,

v.

United States Court of Appeals for the Federal Circuit, The Flying Tiger Line Inc., The Patent and Trademark Office, Blakely, Sokoloff, Taylor, Zafman and Hyman, et al.,

Respondents.

PROOF OF SERVICE

REPUBLIC OF THE PHILIPPINE)
CITY OF MANILA) ss.:

Robert Zlomke, after being duly sworn, deposes and says that pursuant to Rule 28.4(a) and 28.5(c) of this court he served three copies, including Entry of Appearance and Proof of Service, of the Petition in the above-entitled case in printed form entitled Petition for Writs

of Certiorari, Mandamus, Prohibition and for Declaratory relief to the United States Court of Appeals for the Federal Circuit on the Respondents or their respective counsels by enclosing three copies thereof in each of four envelopes, First class postage prepaid, addressed to:

Flying Tiger Line, Inc. and Blakely, Taylor, Zafman and Hyman, Suite 244, 9601 Wilshire Boulevard, Hollywood, California, U.S.A.

U.S. Court of Appeals for the Federal Circuit, Judges Skelton, Kashiwa, Nies and Bennett, 717 Madison Place, Washington, D. C.

Patents and Trademark Office Commissioner and Trademark Trial and Appeal Board, Department of Commerce, Washington, D. C.

Solicitor General of the United States, Department of Justice, Washington, D. C. 20530.

and depositing same in the International Mails at Manila, Philippines, Former Commonwealth of the United States on January 4, 1985.

Robert Ziomke

Subscribed and Sworn to before me this 4 day of January 1985.

Notary Public

My commission expires on Dec. 31, 1985

MANUEL L. MELO
NOTARY PUBLIC
UNTIL DECEMBER 31 1986
PTR No. 2490371 MANILA
JAN. 2 1985

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Series of 1985

Appendice 'BB'

In the
Supreme Court of the United States
October Term, 1985
No. ————

Morton F. Meads, as International Commander of the Flying Tigers International, Robert Zlomke, as Officer and Small Stockholder of the Flying Tigers Oil Company, Inc., The Flying Tigers International and the Flying Tigers Oil Company, Inc., et al.,

Petitioners,

v.

United States Court of Appeals for the Federal Circuit, The Flying Tiger Line Inc., The Patent and Trademark Office, Blakely, Sokoloff, Taylor, Zafman and Hyman, et al.,

Respondents.

SWORN STATEMENT OF MAILING

Republic of the Philippines)
) S.S.:
City of Manila)

Robert Zlomke, after being duly sworn, deposes and says that pursuant to Rule 28.2 of this Court he filed 40 printed Copies of the Petition for Certiorari to the U.S. Court of Appeals for the Federal Circuit and for Mandamus/Prohibition and Declaratory Relief within the

90 day period for such filing by mailing said 40 copies to the Clerk of the Supreme Court of the United States by enclosing them in a package or box, with Postage fully prepaid, First Class, addressed to:

The Clerk
Supreme Court of the United States
No. 1, First Street
Washington, D. C. USA

and depositing same in the International Mails at Manila, Philippines, Former Commonwealth of the United States, on ~~JAN 4~~, 198~~5~~.

ROBERT ZLOMKE
Affiant and Petitioner (PRO SE)
In Forma Pauperis

Subscribed and Sworn to before me this 4 day of JANUARY, 198~~5~~.

Notary Public
My Commission Expires: ~~Dec. 31, 1985~~

MANUEL L. MELO
NOTARY PUBLIC
UNTIL DECEMBER 31 1986
PTR No.2490371 MANILA
JAN. 2 1985

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Appendice 'CC'

In the
Supreme Court of United States
October Term, 1985

No. ———

Morton F. Meads, as International Commander of the Flying Tigers International; The Flying Tigers International; Robert Zlomke, as Officer and Small Stockholder of the Flying Tigers Oil Company, Inc.; and the Flying Tiger Oil Company, Inc., et al.,

Petitioners,

v.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, The Flying Tiger Line Inc., et al.,

Respondents.

ENTRY OF APPEARANCE

Notice is hereby given that Vicente L. Santiago hereby enters his appearance in the above-entitled case as counsel on behalf of the Flying Tigers International if the Appearance of Morton F. Meads, International Commander of the Flying Tigers International, is not approved on behalf of the Flying Tigers International, or the latter Pro Se, with its International Commander, Morton F. Meads, signing for the Flying Tigers International, Pro Se.

The Flying Tigers International was a proposed Intervenor in the U.S. Court of Appeals for the Federal

Circuit, which was denied. It was a Petitioner in a Petition in the U.S. Court of Appeals for the Federal Circuit which was joined with Appeal 84-602. It is a Petitioner in this case.

Copies of all Orders, Decisions, Processes and Pleadings for the said Petitioner may be served upon the undersigned relative to the above-entitled case at the following address:

Vicente L. Santiago, Attorney at Law
P. O. Box 1094, Manila Philippines

Dated: January 4, 1985.

Vicente L. Santiago
VICENTE L. SANTIAGO

BEST AVAILABLE CO

Appendice "DD"

In the
Supreme Court of the United States
October Term, 1985
No. ————

Morton F. Meads, as International Commander of the Flying Tigers International; The Flying Tiger International; Robert Zlomke, as Officer and Small Stockholder of the Flying Tigers Oil Company, Inc.; and the Flying Tigers Oil Company, Inc. et al.,

Petitioners,

v.

United States Court of Appeals for the Federal Circuit, The Flying Tiger Line Inc., The Patent and Trademark Office, Blakely, Sokoloff, Taylor, Zafman and Hyman, et al.,

Respondents.

SWORN STATEMENT OF MAILING

Republic of the Philippines)
) SS.:
City of Manila)

Vicente L. Santiago, after being duly sworn, deposes and says that pursuant to Rule 28.2 of this Court he filed, together with Robert Zlomke, 40 printed copies of the Petition for Certiorari to the U.S. Court of Appeals for the Federal Circuit and for Mandamus/Prohibition and Declaratory Relief within the 90 day period for such filing by mailing said 40 copies to the Clerk of the Supreme Court of the United States by enclosing

them in a package or box, with postage fully prepaid, First Class, addressed to:

The Clerk
Supreme Court of the United States
No. 1, First Street
Washington, D. C. USA

and depositing same in the International Mails at Manila, Philippines, Former Commonwealth of the United States, on January 4, 1985.

Vicente L. Santiago
VICENTE L. SANTIAGO
Counsel for the Flying Tigers Oil Co. Inc.
and the Flying Tigers International

Subscribed and Sworn to before me this 4 day of JAN 1985 January, 1985.

Notary Public
My Commission expires on Dec. 31, 1985

NORBERTO ZULUETA
NOTARY PUBLIC UNTIL DEC. 31, 1985
MANILA PTR No. 4361

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